



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

Date of decision: 23rd SEPTEMBER, 2022

IN THE MATTER OF:

+ **LPA 542/2022 & CM APPLs. 41430/2022 & 41431/2022**

S JASSA SINGH RAMGARHIA PUBLIC SCHOOL Appellant

Through: Mr. Kunal Gosain with Mr.
Akashdeep Malik, Advocates.

versus

DIRECTORATE OF EDUCATION AND ORS Respondent

Through: Mr. Prashant Kumar for Ms. Latika
Choudhary, Advocates

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

JUDGMENT

SUBRAMONIUM PRASAD, J

1. The present LPA arises out of the Impugned Order dated 25.04.2022 passed by the Ld. Single Judge in **W.P. (C) 13676/2018** titled as Sartaj Kaur & Anr. v. Director of Education & Anr., whereby the learned Single Judge has allowed the Writ Petition filed by Respondents No.2 and 3 herein, and has directed the Appellant herein to release the salaries of Respondents No.2 & 3 herein, including their entitlement under the 7th Pay Commission, within four months from the date of the Order, along with the interest @ 6% per annum from February 02, 2015 to December 31, 2015. The benefits thereafter were directed to be paid without interest. The learned Single Judge disposed of the writ petition with a cost of Rs.25,000/- that was to be paid by the Appellant herein (Respondent No.2 in the Writ Petition) to each of the Petitioners in the writ petition.

2. Shorn of details, the facts leading to the filing of the instant LPA are that the Respondent No.2 was appointed as an Assistant Teacher at the



Appellant School on 15.11.2000 on a salary of Rs.1,800/- per month and Respondent No.3 was appointed as an Assistant Teacher on 05.02.1973 on a salary of Rs.900/- per month. Contending that the salaries were not being paid as per Section 10 of the Delhi School Education Act & Rules, 1973 (*hereinafter referred to as 'the DSE Act and Rules'*), which mandates that the 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 employees of the corresponding status in schools run by the Government, Respondents No.2 & 3 herein approached this Court by filing W.P. (C) 13676/2018.

3. The facts of the case reveal that the services of Respondents No.2 & 3 had been terminated but the Order terminating services of the Respondents had been set aside and Respondents No.2 & 3 joined their duties on 02.02.2015. The facts further reveal that Respondents No.2 & 3 had approached the Delhi School Tribunal (*hereinafter referred to as 'the Tribunal'*) for payment of salary for the period in which they were not in service and the Tribunal *vide* Order dated 16.01.2015 decided the issue of the Respondents No.2 & 3 herein with regard to the salary which was to be paid during the period they had been illegally terminated. It is stated by Respondents No.2 & 3 that the School is paying salaries far less than what they are entitled to.

4. Notices were issued in the writ petition, however, the Appellant School did not file any counter and the material on record further demonstrates that even on the date when the case was being finally heard by the learned Single Judge, an adjournment was sought by the Appellant herein to file a counter affidavit, the request being ultimately rejected by the learned Single Judge. The learned Single Judge found that the Respondents No.2 & 3 were working



in the pay scale of Rs.9300-34800, but were not being paid their salary of Rs.8,430/-, which was much less than their entitlement. Before the learned Single Judge, it was contended that the Order passed by the Tribunal for payment of salary for the past period had been passed on the basis of a statement of the erstwhile Manager of the School, who had no instructions in that regard. The learned Single Judge rejected this contention on the ground that the School had not challenged the Order of the Tribunal granting the salary for the past period. The learned Single Judge allowed the writ petitions placing reliance on the judgment of this Court in **W.P.(C) 3746/2020**, titled as Shikha Sharma v. Guru Harkrishan Public School & Ors., in which directions had been passed for payment of salary in a minority institution equivalent to salaries payable in schools run by the Government.

5. The learned Counsel for the Appellant School has contended that Section 10 of the DSE Act directs that 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. However, Section 12 of the Act states that nothing contained in Chapter IV, which deals with the terms and conditions of service of employees of recognised private schools and also includes Section 10, shall apply to unaided minority Schools. Therefore, it is his submission that Section 10 of the DSE Act does not apply to the Appellant School as it is an unaided minority school. This contention of the Appellant School has to be rejected because this question of law has been settled a long while back. The Apex Court in Frank Anthony Public School Employees' Assn. v. Union of India, (1986) 4 SCC 707, has held that notwithstanding Section 12 of the DSE Act, employees of a minority institution have to be paid salaries which



are equal to the salaries being paid to the employees of schools run by the Government. Relevant paragraph of the said Judgment reads as under:

“17. Apart from the learned Judges who constituted the nine-Judge Bench, other learned Judges have also indicated the same view. In the leading case of the Kerala Education Bill [AIR 1958 SC 956 : 1959 SCR 995] , the Constitution Bench observed that, as then advised, they were prepared to treat the clauses which were designed to give protection and security to the ill-paid teachers who were engaged in rendering service to the nation as permissible regulations. The observations were no doubt made in connection with the grant of aid to educational institutions but that cannot make any difference since, aid, as we have seen, cannot be made conditional on the surrender of the right guaranteed by Article 30(1). In State of Kerala v. Mother Provincial [(1970) 2 SCC 417 : AIR 1970 SC 2079 : (1971) 1 SCR 734] it was said that to a certain extent the State may regulate conditions of employment of teachers. In All Saints High School v. Govt. of A.P. [(1980) 2 SCC 478 : AIR 1980 SC 1042] Chandrachud, C.J., expressly stated that for the maintenance of educational standards of an institution it was necessary to ensure that it was competently staffed and therefore, conditions of service prescribing minimum qualifications for the staff, their pay scales, their entitlement to other benefits of service and the safeguards which must be observed before they were removed or dismissed from service or their services terminated were permissible measures of a regulatory character. Kailasam, J. expressed the same view in almost identical language. We, therefore, hold that Section 10 of the Delhi School Education Act which requires that 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 and which further



prescribes the procedure for enforcement of the requirement is a permissible regulation aimed at attracting competent staff and consequently at the excellence of the educational institution. It is a permissible regulation which in no way detracts from the fundamental right guaranteed by Article 30(1), to the minority institutions to administer their educational institutions. Therefore, to the extent that Section 12 makes Section 10 inapplicable to unaided minority institutions, it is clearly discriminatory.”

6. The Division Bench of this Court in Dhanwant Kaur Butalia & Ors. v. Guru Nanak Public School & Ors., **2016 SCC OnLine Del 699**, after quoting the judgment in Frank Anthony Public School Employees' Assn (supra) has held that notwithstanding Section 12 of the DSE Act, the salaries of the employees of the private schools should not be less than the salaries of employees of the corresponding status in schools run by the Government. Relevant paragraph of the said Judgment reads as under:

“8. The Court also notices that the pre-existing Section 12 which had excluded the application of Section 10 and other provisions of the Chapter, to unaided minority schools was set aside by the Supreme Court in Frank Anthony School Employees Association v. Union of India AIR 1987 SC 311. The Supreme Court expressly considered the impact of Section 10 and whether it had the effect of eroding the minority character of schools entitled to protection under Article 30 and concluded that it did not. The said judgment has been constantly followed and it was not overruled but was approved in TMA Pai Foundation's case (supra). Section 10 with its consequential resultant mandate is that scales of pay, allowances, medical facilities, gratuity, provident fund “and other prescribed benefits” which employees of “corresponding status” in schools of the appropriate government are to be granted to employees of all unaided schools.”



7. In view of the above, the contention of the Appellant that Section 10 would not apply to the Appellant School, does not hold any water. Learned Counsel for the Appellant further contends that the Respondents ought to have moved the Tribunal under the DSE Act and the writ petition ought not to have been entertained. It is settled principle that just because an alternate remedy is available, it does not create a legal bar on a High Court to exercise its writ jurisdiction [Refer: Maharashtra Chess Assn. v. Union of India, (2020) 13 SCC 285]. In any event, when it is now settled that Section 10 of the DSE Act applies to minority institutions, the sole contention raised by the Appellant regarding availability of an alternate remedy cannot be accepted.

8. When this Court pointedly asked the learned Counsel for the Appellant as to whether the Appellant is prepared to devise and provide a scheme and time table according to which the Appellant School would be willing to pay the arrears to the Respondents No.2 & 3, learned Counsel for the Appellant stated that the Appellant School is not in the position to pay the amounts.

9. In view of the above, this Court does not find any reason to interfere with the judgement of the learned Single Judge. Accordingly, the appeal is dismissed, along with pending application(s), if any.

SATISH CHANDRA SHARMA, C.J.

SUBRAMONIUM PRASAD, J

SEPTEMBER 23, 2022

Rahul