2022/DHC/004536

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

% *Decided on: 16.09.2022*

\+ **LPA 541/2018**

VIDYA BHARATI SCHOOL ..... Appellant

Through: Mr. Atul Bandhu, Mr. Saurabh Aggarwal and Mr. Kumara Guru, Advocates.

versus

DIRECTORATE OF EDUCATION & ORS ..... Respondents

Through: Mr. Gautam Narayan, ASC for GNCTD.
Mr. K.P. Gupta, Advocate for R-3.

CORAM:
HON'BLE MR. JUSTICE NAJMI WAZIRI
HON'BLE MR. JUSTICE VIKAS MAHAJAN

NAJMI WAZIRI, J (ORAL)

The hearing has been conducted through hybrid mode (physical and virtual hearing).

1. This appeal impugns the order dated 25.07.2018 passed in W.P.(C) 7700/2018, which has dismissed the appellant's writ petition, in which it had impugned the directions issued by the Directorate of Education ('DOE'), GNCTD, requiring the school to pay arrears of salaries of employees in terms of the 6th Pay Commission.
2. The school had raised two contentions, one of them being that the directions of the DOE were not applicable to it because the school

teachers at a staff meeting had agreed to forgo their arrears of enhanced pay. Therefore, the same could not be sought by any of the teachers; all the more because the school had not enhanced its fees nor collected the same for paying the enhanced salaries. The school claimed that it did not have the financial wherewithal to pay the arrears. The learned counsel for the appellant submits that the Staff Committee had duly understood and appreciated the school's financial incapacity and they had, therefore, agreed to forego enhanced salaries for all times. This contention was rejected by the DOE and rightly so, on the ground that there could not be a waiver of statutory rights of the teachers by way of a private agreement. This is in breach of section 10 of the Delhi School Education Act, 1973, and militates against the public policy of payment of due remuneration, as fixed by the Government from time to time. Such waiver if allowed would subvert the larger public good and render school teachers virtually at the mercy of schools, who may well compel them to discharge their duties at a lesser salary at the threat of being dismissed from service. The DOE's rationale for rejecting the school's contention is recorded in its order dated 10.10.2016. The relevant portions are reproduced hereunder:

> "...
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> *And whereas, as per the advise of Law Department, the Accounts functionaries of DoE thus calculated that a sum of Rs. 3,71,598/- .(Rupees Three Lakh Seventy one Thousand Five Hundred Ninety Eight only) is payable to the petitioner by the Respondent No.1 School, on account of fixation of salary-arrears as per recommendations of Sixth Pay Commission Report (Calculation Sheet Attached) w.e.f.*

01/01/2016.

And whereas, the claim of the Respondent No.1 to 3 that the petitioner agreed to forego the arrears keeping in mind the benefits of the school vide Staff Committee meeting minutes dated 18/03/2009 is not tenable for the reason that the agreement to forego the statutory right to have equal pay scales as that of teachers of government schools has no legal force. And thus concerned school is duty bound to follow section 10 of the Delhi School Education Act & Rule, 1973.

Now therefore, in compliance of order of Hon'ble High Court in above cited case Respondent No. 1, Vidya Bharti School, is hereby directed to pay Rs. 3,71,598/- (Rupees Three Lakh Seventy one Thousand Five Hundred Ninety Eight only) within one week of receipt of this order, to the Petitioner, Shri Anil Kumar Ahuja, PGT (Maths).

This order disposes of the directions issued by the Hon'ble High Court of Delhi in WP (C) 11800 of 2015 titled as Anil Kumar Ahuja Vs Vidya Bharti School & Ors.

This issues with the approval of the Competent Authority."

3. The impugned order holds that the school was liable to pay the arrears in terms of pay fixation dated 11.02.2009 and the school was bound to follow the mandatory directions; we see no reason to disagree with the impugned order because a private agreement cannot subvert inflation related ameliorative statutory mandate of enhanced salary to employees to whom the 6th Pay Commission Recommendations extend. There cannot be an estoppel against statutory compliance.
4. The second contention of the school was that the petition was filed in

2018, therefore, the arrears of pay could only relate back to three years therefrom. Referring to the dicta of the Supreme Court in *State of Orissa and another vs. Mamata Mohanty, (2011) 3 SCC 436*, the appellant contends that for such claims as the teachers pursue, the limitation period of three years would apply. This argument was rejected by the impugned order on the ground that the limitation would not be applicable in cases where the school itself had not complied with statutory duties falling upon it. By its persistent non-compliance, the school expects its teachers/employees, who are already being paid a lesser salary, to expend monies and time on litigation to recover their legitimate dues. Why should the employees, as the weaker party, be compelled to incur unwarranted expense. The teachers have been deprived of their legitimate dues for over a decade. In this regard, the impugned order has reasoned as under:

> *"... 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 hereof which is the mandatory duty of the petitioner.*
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> *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 noncompliance 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."

5. The limitation of claim to arrears of three years is untenable in view of the dicta of the Supreme Court in *Keraleeya Samajam & Anr. Vs Pratibha Dattatray Kulkarni (Dead) Lrs & Ors. 2021 SCC OnLine SC 853*:

> *"...... 4. Therefore the entitlement of the teacher's salaries as per the 5th and 6th Pay Commission to the teaching and non-teaching staff of the second petitioner – school is not required to gone into and only issue which is required to be considered is whether the arrears ought to have been restricted to three years preceding the filing of the writ petition?*
> *5. Having heard Shri Shekhar Naphade, learned Senior Advocate appearing on behalf of the petitioners and learned counsel appearing on behalf of the respondents and considering orders passed in earlier round of litigations which ended up to this court the liability of the management to pay the salaries to the teaching and nonteaching staff as per the 4th Pay Commission and 5th Pay Commission ended in favour of the teaching and nonteaching staff working with the petitioners. Therefore as and when the 6 th Pay Commission recommendations was made applicable as such it was the duty cast upon the petitioners' institution to pay the salary/wages to the teaching and nonteaching staff as per the applicable pay scale as per the 6 th Pay Commission recommendation and for which the staff was not required to move before the Deputy Director (Education) again and*

again. Therefore, the submissions on behalf of the petitioners that as the respondents approached the Deputy Director (Education) subsequently and therefore the question with respect to the limitation will come into play and therefore the respondents shall be entitled to the arrears of last three years preceding the filing of the writ petitions cannot be accepted.

6. The respondents were compelled to approach the Deputy Director only when the petitioners though were required to pay the wages as per the applicable rules and as per the recommendation of 6th Pay Commission, failed to make the payment, the respondents were compelled to approach the Deputy Director (Education) thereafter. Therefore for the lapse and inaction on the part of the petitioners, the respondents cannot be made to suffer and deny the arrears of the salaries as per the 6th Pay Commission recommendation, which otherwise they are entitled to. Every time the teachers were not supposed to approach the appropriate authority for getting the benefit as and when there is a revision of pay as per the pay commission recommendations....”

6. In the present case, the school was to pay monies/salaries in terms of the salary fixation done by DOE way back on 11.02.2009. The school kept pursuing its position and understanding of the law before the DOE, avoiding the statutorily mandated payment, on the basis of a purported waiver by the teachers' association. In compliance with the directions issued on 21.12.2015 in W.P.(C) 11800/2015, the DOE's order directing the school to pay salary and arrears to the teachers was passed on 10.10.2016. The school did not comply with the directions: Now, due to lapse of time, it cannot take any benefit because of its own recalcitrance to comply with the Government's directions and statutory obligations. Its non-compliance over a long period would not create any special equities in its favour and it does not get absolved of

its statutory obligation to pay the salary fixed by the government in terms of the 6th Pay Commission Recommendation. The so-called collective waiver by the teachers of their respective statutory dues can hardly be given cognizance because the nature of employment puts the teachers of a private school on a weaker footing vis-a-vis the school management. What was the nature of the teachers' association meeting, the degree of waiver, the degree of renunciation or intentional relinquishment and for how long, are matters which remain nebulous, thereby rendering the purported resolution untenable[1]. Pay revision in terms of the Pay Commission Recommendations is a matter of public policy, with objective of ensuring that with the passage of time the purchasing power of the government employee is not denuded by inflation and other related factors. It can hardly be anyone's case and will be against public policy that the remuneration of teachers and employees of a school be, for all times, below the standards fixed by the government. The after-effects of such monetary relinquishment on the employees, their families and their financial planning would be dire. Nobody would ordinarily volunteer for such financial deprivation and yet be expected to discharge their duties as teachers with the same devotion and dedication as before the pay revision. The individual remuneration and relinquishment of rights by each teacher, for all times, is not evidenced. The school's contentions were rightly rejected in the impugned order. We find no reason to differ.

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[1] Indira Bai vs. Nand Kishore (1990) 4 SCC 668 Para 5

7. No other arguments are raised.
8. The appeal is without merit and is accordingly dismissed.

NAJMI WAZIRI, J

VIKAS MAHAJAN, J

SEPTEMBER 16, 2022
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