



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

% **Date of order: 25th August, 2023**

+ **W.P.(C) 14225/2021**

SEEMA THAKUR

..... Petitioner

Through: **Mr. Jatin Mongia and Mr. Anatesh Banon, Advocates**

versus

R.D. INTERNATIONAL SCHOOL & ORS.

..... Respondents

Through: **Mr. Surender Chauhan, Mr. Abhinav Singh and Ms. Sudha Arya, Advocates for R-1 and R-2**
Mr. Naushad Ahmed Khan, Advocate for DOE

CORAM:

HON'BLE MR. JUSTICE CHANDRA DHARI SINGH

ORDER

CHANDRA DHARI SINGH, J (Oral)

1. The instant petition under Article 226 of the Constitution of India has been filed on behalf of the petitioner seeking the following reliefs:

“a) Allow the present Writ Petition and direct the Respondent Schools to return the Petitioner's original documents (including class X marksheets and certificate, XII marksheets, B.Sc marksheet, B.Sc (Hons.) marksheet, Post-Graduation marksheets, B.Ed marksheets and M.B.A marksheets) which have been in their custody since October, 2020;



b) Direct the Respondent No. 1 School to release the outstanding salary for the months of January, February and March, 2021 at the rate of Rs.1,39,848/- (Rupees One Lakh Thirty Nine Thousand Eight Hundred Forty Eight Only) per month in favour of the Petitioner,

c) Direct the Respondent No. 3 Department to take necessary action against the Respondent Schools for the mistreatment and harassment meted out to the Petitioner;

d) Pass any such orders/directions as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case."

2. The background of the controversy between the parties before this Court is discussed hereafter:

a. Respondent no. 1, R.D. International School and respondent no.2, R.D. Public Senior Secondary School, operate under the common management of one Rahul Dhaka Vikas Society.

b. In pursuance of an advertisement dated 22nd September, 2020, the petitioner participated in an interview for the position of Principal at R.D. Public Senior Secondary School, respondent no. 2. The petitioner was appointed against the said post on 26th September, 2020. At the time of the interview, she was intimated that she may be appointed in either of the respondent Schools, under the management of Rahul Dhaka Vikas Society.

c. On 5th October 2020, vide Offer Letter of the same date, the



petitioner was informed that she was being appointed as Principal at the respondent no. 1 School instead of respondent no. 2. Accordingly, the petitioner joined her duties with respondent no. 1 on 2nd December 2020.

d. It is the case of the petitioner that on 18th February 2021, the petitioner tendered her resignation seeking discharge from her duties from 31st March, 2021 and also sought her original marksheets and certificates as well as cheque book of her salary account at the Bank of Baroda, for clearance of all financial dues. On 3rd March 2021, the petitioner applied for leave to go to Indore to care of her mother-in-law who was suffering from illness.

e. It is also the case of the petitioner that the respondent no. 1 failed to clear her outstanding dues and return her original documents, despite her request and hence, she made a complaint to respondent no. 3 and 4. Meanwhile, the Chairman of respondent no.1 also made a complaint against the petitioner leveling allegations of theft.

f. Pursuant to the complaint, the respondent no. 3, *vide* its office order bearing DDE (Zone-XII) Ref. No. Zone-XI/DNWB/2020/1738 dated 2nd July 2021, constituted a two-member Committee on 6th July 2021 to enquire into the complaint matter of the petitioner and to submit a report.

g. Accordingly, the enquiry was initiated where the petitioner submitted her reply to the complaint with supporting documents.



Subsequently, the Committee made its report on 13th July 2021 and recommended necessary actions against the respondent Schools.

h. The petitioner thereafter filed an application under the Right to Information Act, 2005 on 21st October 2021 and received the reply to her query on 4th October 2021 along with a copy of Inquiry Report of the Committee dated 13th July 2021 and the Action Taken Report by the DDE (Zone-XII).

i. The petitioner is now before this Court aggrieved of the alleged inaction against the respondent Schools and is also seeking directions to the respondent Schools to release her original documents and clear her outstanding dues.

3. The submissions made on behalf of the parties, in their pleadings as well as during the course of arguments, are discussed hereinafter.

On behalf of the Petitioner

4. The learned counsel appearing on behalf of the petitioner submitted that upon the appointment of the petitioner, she had submitted her original documents, including her mark sheets, certificates and cheque book of her salary account with Bank of Baroda, which she sought to be returned through her various communications to the respondents as well as by way of complaint to the Directorate of Education. However, despite such repeated requests neither the respondents have returned her original documents, nor has respondent no. 3 taken any action against the respondents Schools.



Moreover, the respondents have refused to return the original documents of the petitioner.

5. It is submitted that despite repeated communications and requests the respondents also did not release the outstanding dues of the petitioner for the time period from January to March 2021, which rightfully accrue in her favour since she fulfilled her duties and responsibilities as a Principal at the respondent no. 1.

6. It is submitted that the management of the respondent Schools also filed a false complaint alleging theft against the petitioner with the sole purpose of harassing her.

7. It is further submitted that the Committee constituted to look into the complaint of the petitioner recommended necessary action against the respondent Schools, however, no action has been taken on its Report yet. Moreover, the Coordination Branch of respondent no. 3 also assured the petitioner on 31st July 2021 that an action would be taken against the respondent Schools, however, the documents and dues as sought by the petitioner have still not been granted to her.

8. The learned counsel for the petitioner submitted that the petitioner has not been able to secure an alternative employment since she does not have her original documents and the respondents have been harassing her by withholding her documents. It is, hence, prayed that since the respondents have not been releasing the documents of the petitioner as well as her outstanding dues, directions may be given by this Court to release the same.



On behalf of the Respondents

9. *Per Contra*, the learned counsel for the respondents vehemently opposed the instant petition, the contents and the prayer therein.

10. On behalf of respondent no. 1 and 2, it is submitted at the very outset that the petitioner never submitted her original documents with the Schools. The petitioner did not submit her marksheets, certificates, cheque book or any original documents to the respondent Schools. It is submitted that the petitioner only submitted laminated coloured photocopies of her original documents, which the Administrator believed to be the original copies and kept in sealed covers after signing the acknowledgment dated 4th October 2020. The Department only came to know that the documents submitted by the petitioner were photocopies of the original when it conducted an enquiry and sealed envelope was opened.

11. It is submitted that no resignation was ever tendered by the petitioner to the respondent School and the emails placed before the Court have been manipulated. It is also submitted on behalf of the respondent Schools that the Offer Letter dated 2nd December 2020 accepted by the petitioner clearly stipulated that the petitioner had to serve 90 days' notice period at the time of resignation, failing which she was liable to pay damages to the School. Admittedly, the petitioner did not serve her notice period at the time of her resignation and hence, is liable to abide by the terms of her Offer Letter.



12. It has been submitted that petitioner has joined her duties since 14th January 2021 and that too without any intimation or information to the management of respondent no. 1 School. The averments made on behalf of the petitioner regarding handing over of documents, keys etc. are also completely false.

13. The learned counsel for the respondents submitted that the salary for the month of December, 2020 had been paid to the petitioner and thereafter, she did not join services since 14th January 2021, and submitted her alleged resignation on 18th February 2021 without abiding by the terms of her employment, therefore, she is not entitled to any reliefs as claimed by her. Hence, it is submitted that the instant petition is liable to be dismissed for being devoid of merit as there is no relief which a writ court may grant in favour of the petitioner.

14. Heard the learned counsel for the parties and perused the record.

15. The petitioner has preferred the instant petition for return of her original documents which she claims to have submitted at the time of joining. The petitioner had resorted to remedies like complaining to respondent no.3 but it did not render a substantive solution and hence, she is before this Court. On the contrary, the respondents submit that no original documents were ever furnished by the petitioner to the respondents and their submissions, have raised disputes to contentions raised on behalf of the petitioner.

16. Upon hearing the parties at length, it is evident that disputes have



raised by the parties on issues that are pure questions of fact, such as the question of nature of appointment, whether the petitioner ever submitted her original documents, whether she was required to serve her notice period of 90 days, as per her Offer Letter, etc. However, the law pertaining to entertaining and adjudicating upon such questions of fact has been well settled by way of several pronouncements.

17. The Constitution of India, by its provision, and the Courts of the Country, by their interpretation, have together settled the position that while the High Courts exercising writ jurisdiction under Article 226 have power to adjudicate upon facts and law, they shall ordinarily not enter into question of highly contested and disputed facts. Further, such powers to enter into disputes questions of fact are discretionary and shall be exercised in exceptional circumstances.

18. To this effect, the Hon'ble Supreme Court in the judgment passed in ***Orissa Agro Industries Corpn. Ltd. v. Bharati Industries, (2005) 12 SCC 725***, observing as under:

“8. In a catena of cases this Court has held that where the dispute revolves round questions of fact, the matter ought not to be entertained under Article 226 of the Constitution. [See State Bank of India v. State Bank of India Canteen Employees' Union [(1998) 5 SCC 74 : 1998 SCC (L&S) 1270] and Chairman, Grid Corpn. of Orissa Ltd. (GRIDCO) v. Sukamani Das [(1999) 7 SCC 298] .]

9. In the instant case the High Court has itself observed that disputed questions of fact were involved and yet went on to give directions as if it was adjudicating the money claim in a suit.



The course is clearly impermissible. (See G.M., Kisan Sahkari Chini Mills Ltd. v. Satrughan Nishad [(2003) 8 SCC 639] and Rourkela Shramik Sangh v. Steel Authority of India Ltd. [(2003) 4 SCC 317 : 2003 SCC (L&S) 456])”

19. Relying upon various judgments, in the aforesaid case, it was held that the matter which revolves around several questions of fact ought not to be entertained by High Courts under Article 226 of the Constitution of India. The position was thereafter elaborately discussed in the subsequent judgment passed in ***State of Kerala v. M.K. Jose*, (2015) 9 SCC 433**, wherein the following was held:

“16. Having referred to the aforesaid decisions, it is obligatory on our part to refer to two other authorities of this Court where it has been opined that under what circumstances a disputed question of fact can be gone into. In Gunwant Kaur v. Municipal Committee, Bhatinda [(1969) 3 SCC 769], it has been held thus: (SCC p. 774, paras 14-16)

“14. The High Court observed that they will not determine disputed question of fact in a writ petition. But what facts were in dispute and what were admitted could only be determined after an affidavit-in-reply was filed by the State. The High Court, however, proceeded to dismiss the petition in limine. The High Court is not deprived of its jurisdiction to entertain a petition under Article 226 merely because in considering the petitioner's right to relief questions of fact may fall to be determined. In a petition under Article 226 the High Court has jurisdiction to try issues both of fact and law. Exercise of the jurisdiction is, it is true, discretionary, but the discretion must be exercised on sound judicial principles. When the petition raises questions of fact of a complex nature, which may for their determination require oral evidence



to be taken, and on that account the High Court is of the view that the dispute may not appropriately be tried in a writ petition, the High Court may decline to try a petition. Rejection of a petition in limine will normally be justified, where the High Court is of the view that the petition is frivolous or because of the nature of the claim made dispute sought to be agitated, or that the petition against the party against whom relief is claimed is not maintainable or that the dispute raised thereby is such that it would be inappropriate to try it in the writ jurisdiction, or for analogous reasons.

15. From the averments made in the petition filed by the appellants it is clear that in proof of a large number of allegations the appellants relied upon documentary evidence and the only matter in respect of which conflict of facts may possibly arise related to the due publication of the notification under Section 4 by the Collector.

16. In the present case, in our judgment, the High Court was not justified in dismissing the petition on the ground that it will not determine disputed question of fact. The High Court has jurisdiction to determine questions of fact, even if they are in dispute and the present, in our judgment, is a case in which in the interests of both the parties the High Court should have entertained the petition and called for an affidavit-in-reply from the respondents, and should have proceeded to try the petition instead of relegating the appellants to a separate suit.”

20. It is apparent that this Court is not deprived of its jurisdiction to entertain a petition under Article 226 merely for the reason that the petitioner's right to relief questions of fact may fall for consideration and



determination, however, it is also established that while exercising powers for adjudicating controverted questions of facts, discretion must be exercised on sound judicial principles. It is also settled that when the petition raises questions of fact of a complex nature, which may for their determination require appreciation of evidence the High Court may decline to try a petition if it is deemed that the dispute in question may not be appropriately tried while exercising writ jurisdiction.

21. Further, in ***Popatrao Vyankatrao Patil v. State of Maharashtra, (2020) 19 SCC 241***, the Hon'ble Supreme Court on this issue discussed and held as under:

“9. No doubt that, normally, when a petition involves disputed questions of fact and law, the High Court would be slow in entertaining the petition under Article 226 of the Constitution of India. However, it is a rule of self-restraint and not a hard-and-fast rule. In any case, this Court in ABL International Ltd. v. Export Credit Guarantee Corpn. of India Ltd. [ABL International Ltd. v. Export Credit Guarantee Corpn. of India Ltd., (2004) 3 SCC 553] has observed thus : (SCC pp. 568-69, para 19)

“19. Therefore, it is clear from the above enunciation of law that merely because one of the parties to the litigation raises a dispute in regard to the facts of the case, the court entertaining such petition under Article 226 of the Constitution is not always bound to relegate the parties to a suit. In the above case of Gunwant Kaur [Gunwant Kaur v. Municipal Committee, Bhatinda, (1969) 3 SCC 769] this Court even went to the extent of holding that in a writ petition, if the facts require, even oral evidence can be taken. This clearly shows that in an



appropriate case, the writ court has the jurisdiction to entertain a writ petition involving disputed questions of fact and there is no absolute bar for entertaining a writ petition even if the same arises out of a contractual obligation and/or involves some disputed questions of fact.”

11. It could thus be seen, that even if there are disputed questions of fact which fall for consideration but if they do not require elaborate evidence to be adduced, the High Court is not precluded from entertaining a petition under Article 226 of the Constitution. However, such a plenary power has to be exercised by the High Court in exceptional circumstances. The High Court would be justified in exercising such a power to the exclusion of other available remedies only when it finds that the action of the State or its instrumentality is arbitrary and unreasonable and, as such, violative of Article 14 of the Constitution of India. ...”

22. The sum and substance reiterated by the Hon’ble Supreme Court is that the discretion lies with the writ court under Article 226 of the Constitution of India to entertain a writ petition which culls out questions of fact. It may exercise its discretion and entertain a petition where there are questions of fact to be decided in exceptional circumstances. However, where elaborate evidence is required adduced the writ court may decide not to exercise its jurisdiction under Article 226.

23. The position has also recently been reiterated in ***Shubhas Jain v. Rajeshwari Shivam***, 2021 SCC OnLine SC 562, where in the Hon’ble Supreme Court stated as under:

“26. It is well settled that the High Court exercising its



extraordinary writ jurisdiction under Article 226 of the Constitution of India, does not adjudicate hotly disputed questions of facts. It is not for the High Court to make a comparative assessment of conflicting technical reports and decide which one is acceptable.”

24. In the matter at hand, there are questions which have been posed before this Court which are certainly disputed questions of fact as discussed in the foregoing paragraphs. While preferring this petition, the petitioner seeks return of her original documents, however, the concerned respondents have challenged the very existence of such documents and its submission to the respondents. Secondly, the petitioner and respondents have rather divergent contentions regarding to the period which the petitioner had tend to her duties as a Principal, which is a question which shall be investigated into to adjudicate upon the second relief sought by the petitioner pertaining to the payment of outstanding dues. The submission or non-submission of the documents and the absence or presence of the petitioner during the course of her appointment are disputes which require inquiry into elaborate evidence, which may only be attracted in certain exceptional circumstances, as discussed above.

25. At this stage, another consideration before this Court is whether the prayers which have been sought by the petitioner even fall for consideration under the scope of writ of mandamus. A writ of mandamus, in the nature of command, may be issued for to direct a person, corporation, inferior courts or Government, requiring them to do a certain action which relates to their office and is in the nature of a public duty.



26. The Hon'ble Supreme Court in ***Director of Settlements, A.P. v. M.R. Apparao, (2002) 4 SCC 638*** expounded on scope of writs and then settled pre-requisites for issuing of mandamus as under:

“17. Coming to the third question, which is more important from the point of consideration of the High Court's power for issuance of mandamus, it appears that the Constitution empowers the High Court to issue writs, directions or orders in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari for the enforcement of any of the rights conferred by Part III and for any other purpose under Article 226 of the Constitution of India. It is, therefore essentially, a power upon the High Court for issuance of high prerogative writs for enforcement of fundamental rights as well as non-fundamental or ordinary legal rights, which may come within the expression “for any other purpose”. The powers of the High Courts under Article 226 though are discretionary and no limits can be placed upon their discretion, they must be exercised along the recognised lines and subject to certain self-imposed limitations. The expression “for any other purpose” in Article 226, makes the jurisdiction of the High Courts more extensive but yet the Courts must exercise the same with certain restraints and within some parameters. One of the conditions for exercising power under Article 226 for issuance of a mandamus is that the Court must come to the conclusion that the aggrieved person has a legal right, which entitles him to any of the rights and that such right has been infringed. In other words, existence of a legal right of a citizen and performance of any corresponding legal duty by the State or any public authority, could be enforced by issuance of a writ of mandamus. “Mandamus” means a command. It differs from the writs of prohibition or certiorari in its demand for some activity on the part of the body or person to whom it is addressed. Mandamus is a command issued to direct any person, corporation, inferior courts or Government, requiring him or



them to do some particular thing therein specified which appertains to his or their office and is in the nature of a public duty. A mandamus is available against any public authority including administrative and local bodies, and it would lie to any person who is under a duty imposed by a statute or by the common law to do a particular act. In order to obtain a writ or order in the nature of mandamus, the applicant has to satisfy that he has a legal right to the performance of a legal duty by the party against whom the mandamus is sought and such right must be subsisting on the date of the petition (Kalyan Singh v. State of U.P. [AIR 1962 SC 1183]). The duty that may be enjoined by mandamus may be one imposed by the Constitution, a statute, common law or by rules or orders having the force of law. ...”

(emphasis supplied)

27. Evidently, a person before the writ court must satisfy that there exists a legal right in her favour which entitles her to any right which has been infringed. A legal duty may only be directed to be performed where is existence of a legal right of a citizen. It can also be said that a person may be granted a writ of mandamus only when there exists a legal and/or public duty upon the person or authority concerned against whom a writ of mandamus is being sought.

28. In the instant case, the petitioner is seeking the return of her documents, which the respondents have objected to on the ground that the same were never transferred to the possession of the respondents. The keeping or returning of documents, is certainly not a public duty or public function of the respondent School. There can be nothing to suggest that



safekeeping and/or transferring of documents is a core part of the functioning of the respondent Schools. Such relief definitively may not be granted by way of issuance of a writ of mandamus since there is no public duty which is not being performed by the respondents while refusing to grant the documents of the petitioner, the nature of which documents has been disputed in the first instance.

29. Therefore, while appreciating the principles as discussed in the foregoing paragraphs, it is apparent that the petitioner has failed to satisfy this Court for issuance of any writ by exercising its powers under Article 226. There is nothing in the submissions or on record which can satisfy this Court that returning documents of the petitioner would be a public duty of the respondent Schools which may be enforced by way of issuing a writ. Moreover, the fundamental question that whether any documents were ever even submitted by the petitioner remains unsettled since this Court is not inclined to appreciate evidence on this question due to absence of exceptional circumstances.

30. Further, the issue of outstanding payment may also not be adjudicated upon by this Court since as stated above, the disputed questions of facts would require for this Court to appreciate elaborate evidence, however, there are no extraordinary or exceptional circumstances warranting the invocation of powers under Article 226 of the Constitution by this Court. The petitioner has failed to show that there exists a legal right in her favour or any entitlement for outstanding dues or any other monetary grant since the



respondents have strongly urged that the petitioner failed to performed her duties diligently and timely as claimed by her and that she has no right to claim any relief.

31. In view of the aforesaid facts, circumstances, submissions, and the law laid down, this Court is not inclined to exercise discretion and exercise writ powers to grant the relief as sought by the petitioner.

32. Accordingly, the instant petition stands dismissed, along with pending applications, if any.

33. The order be uploaded on the website forthwith.

CHANDRA DHARI SINGH, J

AUGUST 25, 2023
gs/ms

Click here to check corrigendum, if any