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

+ **LPA 601/2022 & CM APPLs. 45446-45447/2022**

**BHARAT MATA SARASWATI BAL MANDIR
SENIOR SECONDARY SCHOOL**

..... Appellant

Through: Mr.Parvinder Chauhan, Advocate
with Ms.Aakriti Garg, Advocate.

versus

VINITA SINGH AND ORS.

..... Respondents

Through: Mr.Yeeshu Jain, Standing Counsel
with Ms.Jyoti Tyagi and Ms.Manisha,
Advocates for R-4&5.

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Date of Decision: 07th July, 2023

CORAM:

HON'BLE MR. JUSTICE MANMOHAN

HON'BLE MS. JUSTICE MINI PUSHKARNA

J U D G M E N T

MANMOHAN, J: (ORAL)

CM APPL. 45446/2022

Keeping in view the averments in the application, the delay in filing the present appeal is condoned.

Accordingly, the application stands disposed of.

LPA 601/2022 & CM APPL.45447/2022

1. Present appeal has been filed challenging the judgment and order dated 14th December, 2021, whereby the writ petition filed by three teachers seeking payment of 7th Central Pay Commission (hereinafter referred to as '7th CPC') has been allowed.



RELEVANT FACTS

2. The relevant facts are that respondents 1 to 3 have been working in the appellant school on regular basis. Pursuant to recommendations of the 7th CPC, respondent No.5/Directorate of Education (DOE) issued notification dated 17th October, 2017, whereby all the private recognized schools were asked to implement the same. Since the benefit of the 7th CPC was not extended by the appellant school, Respondents 1 to 3 approached this Court by filing a writ petition.

3. By the impugned judgment dated 14th December 2021, the learned Single Judge directed the school to grant benefits/salaries to respondents 1 to 3 herein, in terms of provisions of the 7th CPC and further held that they were entitled to arrears thereof w.e.f. 1st January 2016. Thus, the present appeal has come to be filed by the school.

ARGUMENTS BY LEARNED COUNSEL FOR THE APPELLANT

4. Learned counsel for the appellant-school submits that the appellant-school is not amenable to writ jurisdiction as it is an unaided private school. In support of his submission, he relies upon the judgment of the Supreme Court in ***St. Mary's Education Society and Another Vs. Rajendra Prasad Bhargava and Others, 2022 SCC OnLine SC 1091***, wherein it has been held as under:-

“36. It needs no elaboration to state that a school affiliated to CBSE which is unaided is not a State within Article 12 of the Constitution of India [see Satimbla Sharma v. St Paul's Senior Secondary School, (2011) 13 SCC 760 : (2012) 2 SCC (L&S) 75]. Nevertheless the school discharges a public duty of imparting education which is a fundamental right of the citizen [see K. Krishnamacharyulu v. Sri Venkateswara Hindu College of Engg., (1997) 3 SCC 571 : 1997 SCC (L&S) 841]. The school affiliated to CBSE is therefore an “authority” amenable to the jurisdiction under Article 226 of the Constitution of India [see Binny Ltd. v. V. Sadasivan, (2005) 6 SCC 657 : 2005 SCC (L&S) 881]. However, a judicial review of the action challenged



by a party can be had by resort to the writ jurisdiction only if there is a public law element and not to enforce a contract of personal service. A contract of personal service includes all matters relating to the service of the employee — confirmation, suspension, transfer, termination, etc. [see Apollo Tyres Ltd. v. C.P. Sebastian (2009) 14 SCC 360 : (2009) 5 SCC (Civ) 358 : (2010) 1 SCC (L&S) 359].”

5. He further states that even if the writ petition is held to be maintainable, no direction for payment of arrears thereof w.e.f. 1st January, 2016 could have been passed, inasmuch as, the petitioners had approached this Court by preferring the writ petition on 31st August, 2020. He submits that the claim for recovery of arrears beyond the period of three years is barred by law of limitation. In support of his submission, he relies upon the judgment of the Supreme Court in ***Union of India and Others Vs. Tarsem Singh, (2008) 8 SCC 648***, wherein it has been held as under:-

“7. To summarise, normally, a belated service related claim will be rejected on the ground of delay and laches (where remedy is sought by filing a writ petition) or limitation (where remedy is sought by an application to the Administrative Tribunal). One of the exceptions to the said rule is cases relating to a continuing wrong. Where a service related claim is based on a continuing wrong, relief can be granted even if there is a long delay in seeking remedy, with reference to the date on which the continuing wrong commenced, if such continuing wrong creates a continuing source of injury. But there is an exception to the exception. If the grievance is in respect of any order or administrative decision which related to or affected several others also, and if the reopening of the issue would affect the settled rights of third parties, then the claim will not be entertained. For example, if the issue relates to payment or refixation of pay or pension, relief may be granted in spite of delay as it does not affect the rights of third parties. But if the claim involved issues relating to seniority or promotion, etc., affecting others, delay would render the claim stale and doctrine of laches/limitation will be applied. Insofar as the consequential relief of recovery of arrears for a past period is concerned, the principles relating to recurring/successive wrongs will apply. As a consequence, the High Courts will restrict the consequential relief relating to arrears normally to a period of three years prior to the date of filing of the writ petition.”



6. He also relies upon the judgment of the Supreme Court in ***Rushibhai Jagdishbhai Pathak Vs. Bhavnagar Municipal Corporation, 2022 SCC OnLine SC 641***, wherein the judgment of the ***Union of India and Others Vs. Tarsem Singh*** (supra) has been reiterated. The relevant portion of the judgment is reproduced hereinbelow:-

“16. In the facts of the present case, it is accepted that the respondent-Corporation had accepted the interpretation rendered by the High Court of Gujarat to the Scheme whereby the appellants, on financial upgradation, would be entitled to the higher grade pay-scale of the next promotional post, which is Rs. 5,000-8,000/- in the present case. As noted above, the impugned judgment of the Division Bench accepts the said position and grants the appellants the said pay-scale but restricts the benefit from the date of the judgment of the Single Judge in the Writ Petitions filed by the appellants, that is, with effect from 31st July 2018. The Division Bench should not have taken the date of the decision/judgment of the Single Judge for grant of the said benefit in view of the decision and ratio in Tarsem Singh (supra) which has been followed in several other decisions. That apart, the date of the decision of the Single Judge is a fortuitous circumstance. Only the date of filing of the writ petition is relevant while examining the question of delay and laches or limitation. The appellants would, in consonance with the case law referred to above, be entitled to the arrears for three years before the date of filing of the Writ Petitions.”

COURT’S REASONNING

AS THE WRIT INVOLVES A PUBLIC LAW ELEMENT, IT IS MAINTAINABLE

7. Having heard learned counsel for the appellant, this Court is of the view that the writ petition filed by the three teachers is maintainable as it involves a public law element, inasmuch as, the original writ petitioners were seeking the implementation of Section 10(1) of the Delhi School Education Act, 1973 (DSE Act, 1973) which reads as under:-

“10. Salaries of employees.—(1) 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.....”



8. In fact, the writ petitioners by way of the underlying writ petition were also seeking enforcement of circular/order/notification dated 17th October, 2017 issued by DOE directing the schools to make payment of salaries to teachers in accordance with 7th CPC. In fact, in the case of ***St. Mary's Education Society*** (Supra), Supreme Court has categorically held as follows:

“75.1. An application under Article 226 of the Constitution is maintainable against a person or a body discharging public duties or public functions. The public duty cast may be either statutory or otherwise and where it is otherwise, the body or the person must be shown to owe that duty or obligation to the public involving the public law element. Similarly, for ascertaining the discharge of public function, it must be established that the body or the person was seeking to achieve the same for the collective benefit of the public or a section of it and the authority to do so must be accepted by the public.”

9. Consequently, this Court is of the view that the writ petition filed by teachers is maintainable.

WRIT IS NOT BARRED BY DELAY AND/OR LACHES

10. This Court is further of the view that the writ petition filed by the original writ petitioners is not barred by delay and/or laches, inasmuch as, the cause of action is a recurring one.

11. In ***Union of India vs. Tarsem Singh*** (supra), the Supreme Court has itself clarified by way of an example that if the issue relates to payment of pay, relief should be granted in spite of delay as it does not affect third party rights.

12. Further, the judgment in ***Rushibhai Jagdishbhai Pathak Vs. Bhavnagar Municipal Corporation*** (supra) offers no assistance to the appellant as it deals with a case of higher grade pay scale in the next promotional post and which is not the case in the present instance.



CONCLUSION

13. To conclude, it is reiterated that the reliefs claimed by the respondents in the writ petition were for payment of full salary as per recommendations of 7th CPC. Section 10 of the DSE Act provides that the scale of pay and allowances, medical facilities, pension, gratuity, provident fund and other prescribed benefits of a recognized private school shall not be less than those of the employees of the corresponding status in the government school. The DOE in accordance with the DSE Act, 1973 has issued notification dated 17th October, 2017 directing that all recognized schools shall implement the recommendations of 7th CPC. In view thereof, it is the undisputed position of law that teachers of unaided private schools are entitled to the same pay and emoluments as those of government schools, in terms of the obligation enjoined upon the private recognized schools under the DSE Act, 1973. The schools cannot evade their statutory responsibility and are bound to pay the statutory dues.

14. Consequently, this Court is of the view that the present appeal is bereft of merit. Accordingly, the present appeal and application are dismissed but with no order as to cost.

MANMOHAN, J

MINI PUSHKARNA, J

JULY 7, 2023
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