



2023:1000:1164



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

% **Date of order: 12th October, 2023**

+ **W.P.(C) 13439/2023**

SMT. REETA JAIN Petitioner

Through: (appearance not given), Advocate

versus

**DIRECTORATE OF EDUCATION THROUGH DIRECTOR &
ORS.** Respondent

Through: Ms. Laavanya Kaushik for Mrs.
Avnish Ahlawat, Standing Counsel

CORAM:

HON'BLE MR. JUSTICE CHANDRA DHARI SINGH

ORDER

CHANDRA DHARI SINGH, J (Oral)

1. The petitioner *vide* the present petition under Article 226 of the Constitution of India seeks the following reliefs:

“a. Issue a writ of mandamus or any other appropriate writ, order or direction of like nature thereby directing respondent no.1 to properly calculate and submit the computation of the Gratuity amount of the petitioner in accordance with the law and also make a descriptive computation of all the arrears and benefits along with interest till the date of payment.

b. Issue a writ of mandamus or any other appropriate writ, direction or order, for directing Respondent no. 2 to pay all the arrears and benefits as per the detailed calculation of Respondent no. 1 along with interest @ 18% per annum to the petitioner.

Or

Signature Not Verified

Digitally Signed By: SARIKA
BHAMOO VERMA
Signing Date: 21.10.2023
18:11:40

W.P.(C) 13439/2023

Page 1 of 9



Issue a writ or any appropriate writ, order or direction of like nature thereby directing the respondents to pay the arrears of the prescribed benefits as computation submitted by the Petitioner along with interest @18 % per annum to the petitioner.

c. Pass any other or further order as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case in the interest of justice and to meet the ends of justice."

2. The Brief Factual Matrix has been recapitulated hereinbelow-

- a) In 1983, the petitioner joined a private school, Jain Happy School as Primary Teacher (PRT) in the Scale of Rs. 330-560/- which was revised in year 1987 to Rs. 1,200-2040/-.
- b) The petitioner wrote an application seeking leave on medical grounds for the month of July 2012 to September 2012. The Chairman of the respondent no. 2 on 12th September 2012 directed the petitioner to join the respondent school by 30th September 2012.
- c) Pursuant to which the petitioner by way of letter dated 30th September 2012 informed the respondent school that she will join by 15th October 2012. On 3rd 2012, the petitioner was terminated from the respondent school.
- d) On 1st June 2015 the petitioner wrote letter to respondent school, seeking dues as per Section 10 of Delhi School Education Act and Rules, 1973.
- e) Aggrieved by the same, the respondent approached this Court by way of writ petition (c) 8267/2015. This Court disposed of the said writ *vide* dated 02nd September 2022 with the directions to the



petitioner to file a detailed representation/application before Directorate of Education and it was directed to dispose of the representation of the petitioner after passing a detailed and reasoned order in accordance with the law expeditiously.

f) The petitioner in compliance with the said order, submitted a representation to respondent no.1.

g) Thereafter, the petitioner filed made representation with a detailed valuation. The respondent no. 1 as per the representation, made payment to the it, released an amount of Rs. 310154/- for the dues for the petitioner.

h) The petitioner wrote representations to the respondent no.1 regarding the amount calculated by the respondent no. 1 towards the dues of the petitioner, does not entail any amount for the interest for delay.

i) Aggrieved by no reply to the said representations, the petitioner has filed the instant petition.

3. Learned counsel for the petitioner submitted that the respondent school terminated the service of the petitioner on the ground of unauthorized absence is contrary to the provisions of Delhi School Education Act and Rules since, there is no rule authorizing the respondent School to terminate the service of the teacher for the alleged unauthorized absence without following the provisions of Rule 120 of Delhi School Education Act and Rules, 1973.



4. It is further submitted that the respondent no. 1 failed to comply with the order of this Court dated 02nd September 2022 vide which the respondent no. 1 was directed to decide the representation of the petitioner and accordingly, reimburse the dues of the petitioner.

5. Learned counsel for the petitioner contended that the action of respondent school in not making payment of the pecuniary benefits during the course of petitioner's employment with the respondent school as well as in not making payment of the statutory dues like provident fund, gratuity, etc. upon illegal termination of her service is totally illegal and arbitrary.

6. It is further contended that the petitioner's total gratuity amount is Rs. 3,95,682/-, while the respondent no. 1, granted the total gratuity is only Rs. 3,10,154/-. Moreover, the calculation of the gratuity amount involves using the last drawn salary as a fundamental factor, it is an unfair to calculate the gratuity amount.

7. It is submitted that the Government implemented the 6th pay commission's recommendation since January, 2006. However, respondent no. 2 has consistently denied the petitioner the benefits of the 6th pay commission the amounts between the 6th pay commission and the 5th pay commission, during the period of January 2006 to June 2008, amounting to Rs. 2,91,704/-.

8. It is submitted that petitioner's entitlement to arrears, following the 5th Pay Commission's recommendations, was withheld by the school. These arrears were due and payable from 01st January 1996 but were only disbursed in 1998. The disparity in owed amounts between the 6th pay commission and



the 5th pay commission, during the period of January 1996 to June 1998, totals Rs. 3,50,792/- and its obligation to provide all the arrears, including components like HRA, TA, and DA.

9. It is further submitted that the petitioner in terms of section 10 of Delhi School Education Act and Rules, 1973 is entitled to all the allowances, benefits like scale s of pay, HRA, Medical Facilities, ACP, pay commission benefits, provident funds, gratuity and other allowances, etc. which are payable to the employees of corresponding status in the school run by appropriate authority i.e., the Government of Delhi.

10. It is submitted that it is a settled law that the recognized private unaided schools are bound to comply with the provisions of Section 10 of Delhi School Education Act and Rules.

11. It is submitted that the petitioner is entitled to the terminal benefits not only in terms of Section 10 of Delhi School Education Act and Rules but also has a statutory right over the said dues in terms of the provision of Employees Provident Fund and Miscellaneous Provision Act and payment of Gratuity Act.

12. It is submitted that the respondent no.2 school is violating Article 14 and 21 of the Constitution of India by depriving the petitioner of her pay scale, selection grade, PGT scale, pay commission benefits and order allowances and dues.

13. It is contended that the respondent in depriving the petitioner for her lawful dues is tainted with *mala fide* intent to cause unlawful gain to itself and loss to the petitioner.



14. It is submitted that the withholding of the dues of the petitioner by the respondent school, she has been forced to live a destitute life thereby, not only causing financial hardship and also deprived her of a dignified and reasonable life under Article 21 of Constitution of India.

15. In view of the foregoing submissions, the petitioner seeks this Court the present petition may be allowed and the reliefs as prayed by the petitioner may be granted by this Court.

16. *Per Contra*, the learned counsel appearing on behalf of the respondent-DOE vehemently opposed the present writ petition submitting to the effect that the same has no merit since the sum of Rs. 3,10,154/- was to be recovered from the gratuity of the petitioner and the aforesaid recovery is entirely legal.

17. It is further submitted that the said amount has been calculated on the basis of the last drawn statement and accordingly, the respondent has paid the dues of the petitioner and there is nothing due to the petitioner in accordance with the statutory rules and regulations.

18. Hence, in view of the foregoing submissions, the respondent prayed that this Court be pleased to dismiss the instant petition.

19. Heard learned counsel for the parties and perused the material on record including the pleadings, and judicial precedents.

20. Tersely, it is the case of the petitioner that he has demanded an amount of Rs. 3,95,682/- for her gratuity dues, however, the respondent no. 1, granted the total gratuity of only Rs. 3,10,154/-. Hence, respondent no.1 failed to pay any heed to her valuation of arrears and arbitrarily, and without



applying the basic principle of payments of fixation of pension paid the said amount to petitioner.

21. The respondent in this regard has vehemently argued that the respondent has paid the dues of the petitioner and there is nothing due to the petitioner from respondents' side.

22. This Court has to decide whether this Court under its writ jurisdiction can adjudicate upon the issue that the amount of gratuity as paid to the petitioner is computed as per the statutory regulations by the respondent no. 1.

23. Under Article 226, High Court cannot act as a fact- finding tribunal. It has to intervene in those cases, wherein there is a gross violation of legal rights apparent on the face of it. If High Court is of the opinion that there is no such illegality in the actions of the public authority, then it may not intervene in the decisions rendered by the public authority.

24. Moreover, when there is a dispute of the fact, the High Court under Article 226 cannot entertain such a writ. Since, the Court are not a fact-finding Tribunal, the Courts have to restrict themselves to adjudicate wherein there is question of law is involved.

25. The High Court under Article 226 must limit their intervention in the working of the executive and legislature. The intervention of the Courts if done on a day-to-day basis, the same would lead to overlapping on the function of the executive or legislature. Hence, judiciary must act as a watchdog and interfere only in exceptional cases.

26. The said principle has been enunciated by the Hon'ble Supreme Court



2023: 1000: 1164



in the judgment *Shubas Jain vs. Rajeshwari Shivam* [CA 2848 OF 2021] dated 20th July 2021 held as follows:

"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."

27. The impugned order passed by the respondent no. 1 has been enunciated as follows:

As per directions the pay of Smt. Reeta Jain has been fixed from 01.01.98 as per available record provided and as per govt. norms is as follows:

Working as Primary Teacher in the pay scale of Rs. 1200-50-1560-40-2040

Pay as on 31.12.95	Rs. 1670
Pay fixed w.e.f. 01.01.96 as per 5 th CPC in the	Rs. 4875
Pay scale of Rs. 4500-175-7000 with DNI 1.7.96	
Pay as on 1.7.96	Rs. 5000
1.7.97	Rs. 5125
Granted Sr. Scale in pay scale 5500-150-8000 w.e.f. 1.12.97	Rs. 5500
Pay scale of 1400-2660 revised to Rs. 5500-175-9000	
With DNI 1/12/98	
Pay fixed on Promoted to the post TGT in the scale of	Rs. 5850
Rs. 5500-175-9000 w.e.f. 01/4/98 under F672(1)(a)(i)	
With DNI 1/4/98	
1.04.99	Rs. 6025
1.04.2000	Rs. 6300
1.04.01	Rs. 6375
1.04.02	Rs. 6550
1.04.03	Rs. 6725
1.04.04	Rs. 6900
1.04.05	Rs. 7075
Pay fixed as per 6 th CPC w.e.f. 01.01.2006 (7150+1.86)	Rs. 13450 + 4600 (GP)
1.7.06	Rs. 14000 + 4600
1.7.07	Rs. 14600 + 4600
No further increment granted as she proceeds on leave after march 08.	
Accordingly calculation of Gratuity is as under	
$(16600 + 6600 + 3300 \times 15/26) \times 25 = \text{Rs. 310154/-}$	

28. Upon perusal of the impugned order, it is evident that the respondent no. 1 has provided the basis of the calculation of the amount which as per



the respondent no.1 is due to the petitioner. It has passed a reasoned order stating various heads under which the dues are paid.

29. The petitioner's claim as to disputing upon the fact that the basis of the calculation of her dues, cannot be entertained by this Court under its writ jurisdiction. This Court will not venture into the issue whether the valuation as done by the respondent is correct or not as this is a disputed question of facts.

30. In light of the aforementioned discussion, this Court, under its writ jurisdiction, is not a fact-finding Tribunal and cannot look into the aspects whether the calculation as done by the respondent authorities is correct or not.

31. The respondents have acted as per their statutory rule and in accordance with the executive discretion accorded to them and accordingly, paid the dues of the petitioner.

32. The petitioner is unable to make out a case which warrants interference of this Court under its writ jurisdiction. Therefore, this is Court is of the view that the instant petition has no merit and therefore, stands dismissed.

33. Pending applications, if any, also stand dismissed.

34. The order be uploaded on the website forthwith.

CHANDRA DHARI SINGH, J

OCTOBER 12, 2023/pa/db

Click here to check corrigendum, if any