



\$~157 to 161

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

% ***Date of Decision: 13th May, 2024***

+ CONT.CAS(C) 198/2024

SHAGUN DHINGRA

..... Petitioner

Through: Mr. Sermon Rawat, Mr. Vansh Kapoor and Ms. Aastha Vishwakarma, Advocates (M-9873935601)
(sermon.rawat@gmail.com)

versus

CL BHALLA DAYANAND MODEL SCHOOL, & ORS.

..... Respondents

Through: Mr. Anurag L. and Mr. Udit Dwivedi, Advocates for R-2 & 3 (M-9958882392).
Mr. Naushad Ahmed Khan and Ms. Supriya Malik and Mr. Akshit Tyagi, Advocates (M-9868111799)
(intonaushad@gmail.com)

+ CONT.CAS(C) 199/2024

SHARAD GUPTA

..... Petitioner

Through: Mr. Sermon Rawat, Mr. Vansh Kapoor and Ms. Aastha Vishwakarma, Advocates (M-9873935601)
(sermon.rawat@gmail.com)

versus



CL BHALLA DAYANAND MODEL SCHOOL, & ORS.

..... Respondents

Through: Mr. Anurag L. and Mr. Udit Dwivedi,
Advocates for R-2 & 3
(M-9958882392).

+ CONT.CAS(C) 200/2024

ANJU MALHOTRA

..... Petitioner

Through: Mr. Sermon Rawat, Mr. Vansh
Kapoor and Ms. Aastha
Vishwakarma, Advocates (M-
9873935601)
(sermon.rawat@gmail.com)

versus

CL BHALLA DAYANAND MODEL SCHOOL, & ORS.

..... Respondents

Through: Mr. Anurag L. and Mr. Udit Dwivedi,
Advocates for R-2 & 3
(M-9958882392).

+ CONT.CAS(C) 201/2024

KAWALJEET KAUR ALANG

..... Petitioner

Through: Mr. Sermon Rawat, Mr. Vansh
Kapoor and Ms. Aastha
Vishwakarma, Advocates (M-
9873935601)
(sermon.rawat@gmail.com)

versus

CL BHALLA DAYANAND MODEL SCHOOL, & ORS.



..... Respondents
Through: Mr. Anurag L. and Mr. Udit Dwivedi,
Advocates for R-2 & 3
(M-9958882392).

+ CONT.CAS(C) 203/2024

ARTI SHARMA

..... Petitioner

Through: Mr. Sermon Rawat, Mr. Vansh
Kapoor and Ms. Aastha
Vishwakarma, Advocates (M-
9873935601)
(sermon.rawat@gmail.com)

versus

CL BHALLA DAYANAND MODEL SCHOOL, & ORS.

..... Respondents
Through: Mr. Anurag L. and Mr. Udit Dwivedi,
Advocates for R-2 & 3
(M-9958882392).

CORAM:
HON'BLE MS. JUSTICE MINI PUSHKARNA

MINI PUSHKARNA, J (ORAL)

1. The present petitions have been filed alleging willful disobedience of the order dated 18th August, 2023 passed in *W.P.(C) No. 10935/2023*, wherein, the Court directed the respondents to decide the representation of the petitioners within a period of six weeks. There were further directions that the representations shall be decided while keeping in mind the judgment passed by the Coordinate Bench of this Court in *Ms. Seema Anil Kapoor vs.*



C. L. Bhalla Dayanand Model School & Ors., i.e., judgment dated 4th May, 2023 passed in *W.P.(C) 4542/2021*.

2. The present petitions came to be filed, since the representations of the petitioners were not decided, despite lapse of a long time.
3. When the matter was listed for hearing on 8th May, 2024, learned counsel appearing for the respondents had sought time to seek instructions.
4. Today, when the matter is listed for hearing, learned counsel appearing for the respondents has handed over a copy of speaking order dated 10th May, 2024 with respect to all the petitioners.
5. He submits that by the speaking order dated 10th May, 2024, the representations of the petitioners have been decided.
6. The said orders dated 10th May, 2024, as handed over by learned counsel appearing for the respondents, is taken on record.
7. Learned counsel appearing for the petitioners has vehemently opposed the aforesaid submission made by learned counsel appearing for the respondents. He submits that the order passed by the Court was very categorical to the effect that the representations had to be decided within a period of six weeks. He further submits that though the order was passed on 18th August, 2023, wherein, directions had been issued to decide the representation of the petitioners, the said representations have been decided only by way of order dated 10th May, 2024.
8. He, thus, submits that the respondents have passed the orders upon the representations of the petitioners, in a highly belated manner.
9. He further submits that the respondents have not only passed the orders belatedly, but, have also not applied the judgment in the case of *Ms. Seema Anil Kapoor (Supra)*, in terms of the directions passed in order dated



18th August, 2023.

10. He submits that the present petitioners ought to be treated at par with the other employees. He submits that the respondents were required to give the calculation as regards the arrears that were due and payable to the petitioners. He submits that the plea that the aforesaid judgment in the case of *Ms. Seema Anil Kapoor (Supra)*, is not applicable to the petitioners, is totally wrong, and cannot be taken by the respondents.

11. He submits that there were categorical directions by this Court, which ought to have been complied with, by the respondents.

12. Thus, it is the contention of learned counsel for the petitioners that the order dated 10th May, 2024 passed by the respondents, cannot be considered to have been passed, in terms of the order dated 18th August, 2023.

13. He further submits that there is no justification for delay in considering the representations of the petitioners, when the directions were very clear to the effect of considering and disposing of the same, within a period of six weeks.

14. He further submits that as far as the petitioner in *CONT. CAS(C) No.198/2024* is concerned, she had resigned in the year 2018. However, the petitioners in the other cases, had left the service of the school in question, only after their transfer orders. Thus, he submits that the case of the petitioners in the other cases, are totally different from the case of the petitioner in *CONT. CAS(C) No.198/2024*. He, thus, submits that the aforesaid order dated 10th May, 2024, cannot be taken as purging the contempt, by the respondents.

15. It is submitted that the school in question, i.e., C.L. Bhalla Dayanand Model School, is not operational with effect from 01st April, 2021. Thus, it



is only the DAV College Managing Committee, which is before this Court.

16. He further submits that the petitioner in *CONT. CAS(C) No.200/2024* had reached the age of superannuation, on 30th April, 2022.

17. Responding to the aforesaid submissions, learned counsel appearing for the respondents submits that the order dated 18th August, 2023 in *W.P.(C) 10935/2023*, was passed without issuance of any notice to the Managing Committee. He submits that the said order was passed in limine on the first date itself, upon the prayer made by the petitioners, for treating their petitions as representations.

18. He further submits that the Managing Committee of the school was never granted any opportunity of appearing before the Court in the writ proceedings, and that the said order was passed behind the back of the Managing Committee.

19. Learned counsel appearing for the respondents further submits that the aforesaid order merely directed the respondents to deal with the representations of the petitioners, however, there were no specific directions with respect to grant of any benefit to the petitioners.

20. He submits that the respondents had every right to consider the representations of the petitioners and pass appropriate orders, which has been done in the present case.

21. He further submits that the delay in considering the representations of the petitioners is unintentional and inadvertent. He extends unconditional apology to this Court for the delay caused in considering and disposing the representation of the petitioners.

22. Responding to the aforesaid, learned counsel appearing for the petitioners submits that in *CONT. CAS(C) No.203/2024*, notice was issued



to the Management Committee and that they chose not to appear. Thus, he submits that the aforesaid submissions of the respondents ought not to be accepted.

23. I have heard learned counsels for the parties and have perused the record.

24. At the outset, this Court notes that by order dated 18th August, 2023 in *W.P.(C) 10935/2023* and other connected matters, following directions had been passed:

“xxx xxx xxx

*6. Accordingly, the petitioner is directed to file a fresh representation, along with the copy of the judgment which has been cited by learned counsel for the petitioner during the arguments as well as the certified copy of this order, before respondents no. 1 to 3 within one week from today. It is further directed that after receiving the fresh representation, the respondents no. 1 to 3 shall dispose of the fresh representation after hearing the petitioner, while keeping in mind the judgment passed by the Coordinate Bench of this Court in the case of **Ms. Seema Anil Kapoor vs. C. L. Bhalla Dayanand Model School & Ors.** i.e. the writ petition bearing no. *W.P.(C) 4542/2021* dated 4th May 2023 and the bunch of the connected matters, and pass a detailed and reasoned order in accordance with law expeditiously, preferably within six weeks.*

xxx xxx xxx”

25. This Court also notes that in *W.P.(C) 11830/2023*, order dated 2nd November, 2023, was passed, wherein directions were passed, in the following terms:

“xxx xxx xxx

6. Accordingly, the petitioner is directed to file a fresh representation, along with the copy of the judgment which has been cited by learned counsel for the petitioner during the arguments as well as the certified copy of this order, before respondents no. 1 to 3 within one week from today. It is further directed that after receiving the fresh representation, the respondents no. 1 to 3 shall dispose of the fresh representation after hearing the petitioner, while keeping in mind the



judgment passed by the Coordinate Bench of this Court in the case of Ms. Seema Anil Kapoor vs. C. L. Bhalla Dayanand Model School & Ors. i.e. the writ petition bearing no. W.P.(C) 4542/2021 dated 4th May, 2023, and the bunch of the connected matters, and pass a detailed and reasoned order in accordance with law expeditiously, preferably within six weeks.

xxx xxx xxx”

26. Perusal of the aforesaid orders clearly shows that the only directions that were passed in the aforesaid writ petitions were treating the petitions of the petitioners as representation, with directions to the respondents to dispose of the said representations keeping in mind the judgment in the case of ***Ms. Seema Anil Kapoor (Supra)***.

27. This Court takes note of the submissions made by learned counsel appearing for the respondents that the aforesaid judgment in the case of ***Ms. Seema Anil Kapoor (Supra)***, was considered by the respondents at the time of considering the representations of the petitioners.

28. At this stage, it would be fruitful to consider the order dated 10th May, 2024 by the DAV College Managing Committee, pursuant to the aforesaid directions, by way of which, the representations of the petitioners were disposed of by the Managing Committee.

29. One such order dated 10th May, 2024, is reproduced as under:

***“DAV COLLEGE MANAGING COMMITTEE CHITRA GUPTA
ROAD, NEW DELHI - 110 055***

Ref. No. Audit/1027

date: 10.5.2024

*Ms. Shagun Dhingra
L-2/6, DLF Phase - II,
Gurugram, Haryana - 122 022
Email: shagundhingra3112@gmail.com, M. No. 9810694125*

Subject: Reply to your representation dated 31.08.2023 on the subject



'Representation regarding outstanding arrears including arrears of salary as per the 6th Pay Commission and 7th Pay Commission and consequent arrears of Arrears of Employer's contribution to EPF as per 6th CPC and 7th CPC, Arrears of Leave Encashment and Arrears of Gratuity as well as benefits of ACP/MACP.'

We have thoroughly perused your representation dated 31.08.2023 on the above-noted subject.

Be noted that in a similarly placed case in one of the Schools of the same Society wherein an ex-employee filed a writ before the Hon'ble High Court of Delhi being Ritika Sharma vs DAV Primary School & Others (WPC 51/2021) for arrears of pay scale, the same was dismissed in limine on the ground of delay and laches holding that:

"4. Suffice, it would be to state that the petitioner having been appointed as PRT in the year 2007, i.e. thirteen (13) years back and continued to work though on a scale without any benefits, surely cannot agitate the grievance now, that too after she has tendered her resignation on personal grounds. The cause of action if at all accrued, while she was working in the respondent No. 1 school.

This petition filed in the year 2021 is hit by delay and laches. This Court is not persuaded to entertain the present petition filed by the petitioner in the facts of this case. The present writ petition is dismissed."

The aforesaid judgement of the Hon'ble Single Bench was challenged before the Hon'ble Division Bench in LPA being Ritika Sharma vs DAV Primary School & Others (LPA No. 32/2021) which was also dismissed holding that:

"We have considered the contentions urged by Mr. Khagesh Jha. In writ jurisdiction, the Limitation Act, 1963 does not strictly apply, but its principles do apply by application of the doctrine of delay and laches. Thus, in cases where there is unexplained and inordinate delay, the court may refuse to grant relief. The facts, as they emerge in the present petition, do indicate gross delay and laches on the part of the appellant. The factual position remains uncontroverted. Indisputably, till the filing of the representation with the respondents, the appellant had indeed not made any grievance in respect of her service conditions and especially regarding the benefits of the pay scale. This demonstrates that there has been a complete lack of initiative on the part of the petitioner to take remedies under law in respect of the reliefs which she sought in the petition. Since there is an inordinate delay on the part of the appellant, we are unable to find any perversity in the discretion exercised by the Learned Single Judge. It must be remembered that the decision of the Court to



entertain or not entertain a particular action under its writ jurisdiction, particularly having regard to the nature of dispute in the instant case, is fundamentally discretionary. The Court while exercising the writ jurisdiction has to take into consideration the entire conspectus of the case and the reasoning assigned for dismissing the writ petition is quite reasonable and logical. We may also state that while exercising our jurisdiction under the Letters Patent Appeal, the scope of interference is limited and since we perceive no infirmity or manifest illegality or patent error in the view taken by the learned Single Judge, we find no reason to interfere with their exercise of discretion in refusing to entertain the writ petition."

"We may further add that this is also a settled position in law that a writ jurisdiction cannot to be invoked for recovery of dues, particularly if the same are otherwise barred by limitation, and it is only a violation of a right which this Court can settle under Article 226 of the Constitution of India. The appellant always has other efficacious remedies for recovery of her salary dues, if any. Therefore, while we decline to entertain the present appeal, we may only clarify that the appellant would be at liberty to avail her remedies under the civil proceedings for the recovery of dues, if any, with respect to the period which is not barred by limitation. There is no merit in the present appeal, hence dismissed."

With the direction of Director of Education, the school is closed on 31.03.2021.

Vis-à-vis the judgement dated 04.05.2023 in the matter of WPC 4542/2021; Ms. Seema Anil Kapoor vs CL Bhalla Dayanand Model School & Ors. and other connected matters; the said judgement was related to employees who were still in employment whereas, you have already resigned from services w.e.f. 31.03.2018 on personal ground. Thus, the said judgement is not applicable and rather, the aforesaid judgement in the Ritika Sharma case is squarely applicable in your case.

It is further brought to your notice that vide judgement dated 17.11.2023, HMJ Chandra Dhari Singh, Delhi High Court, in a series of connected writ petitions had passed a general order qua benefits of 6th CPC along with arrears, benefits under 7th CPC along with arrears, and retirement benefits such as gratuity, leave encashment, etc. along with interests and costs which are due as per the guidelines of 7th CPC. By the said judgement, the Hon'ble Court has directed the Government to constitute High Powered Committees for overseeing the implementation of the 6th and 7th CPC recommendations for salaries and arrears to staff in private unaided schools and the same



is now pending before the Hon'ble Division Bench of the Delhi High Court. It is clarified that the judgement dated 17.11.2023 was passed later than the judgement relied upon by you and therefore, it is the law of the land, subject to the outcome as before the Hon'ble Division Bench of the Delhi High Court.

In light of the above, your representation stands answered.

xxx xxx xxx”

30. Reading of the aforesaid order dated 10th May, 2024 passed by the DAV College Managing Committee, manifests that the representations of the petitioners have been considered by the respondents.
31. Further, by way of the aforesaid order, it has been clearly stated by the respondents that the judgment in the case of ***Ms. Seema Anil Kapoor (Supra)*** and other connected matters, is not applicable to the petitioners.
32. Further, the respondents have relied upon another judgment dated 22nd January, 2021 passed in *LPA No. 32/2021* in the case of ***Ritika Sharma Versus DAV Public Primary School & Ors.***, and the representation of the petitioners has been decided on the basis of the said judgment.
33. Thus, it is seen that the respondents have substantially complied with the orders passed by the Court for considering the representation of the petitioners.
34. Once a decision has been passed by the respondents in pursuance to the orders for deciding the representations of the petitioners, the validity and legality of the said decision will not be adjudicated by this Court in the present proceedings. Thus, Supreme Court in the case of ***State of Bihar and Others Versus Rajendra Singh and Another, (2007) 15 SCC 688***, while holding that rightness or wrongness of a decision after compliance of the orders of the Courts, cannot be challenged in contempt proceedings, held as



follows:

“xxx xxx xxx

6. If any party concerned is aggrieved by the order which in its opinion is wrong or against rules or its implementation is neither practicable nor feasible, it should always either approach the court that passed the order or invoke jurisdiction of the appellate court. Rightness or wrongness of the order cannot be urged in contempt proceedings. Right or wrong, the order has to be obeyed. Flouting an order of the court would render the party liable for contempt. While dealing with an application for contempt the court cannot traverse beyond the order, non-compliance with which is alleged. In other words, it cannot say what should not have been done or what should have been done. It cannot traverse beyond the order. It cannot test correctness or otherwise of the order or give additional direction or delete any direction. That would be exercising review jurisdiction while dealing with an application for initiation of contempt proceedings. The same would be impermissible and indefensible.

xxx xxx xxx”

35. Law in this regard is very clear that once an order has been complied with, even though belatedly, or with lack of speed in compliance, this Court, will not proceed under the contempt proceedings, in such a case. Thus, the Division Bench of this Court in the case of ***Delhi Rozi Roti Adhikar Abhiyan Versus. Rajesh Ahuja, 2022 SCC OnLine Del 3561***, has held as follows:

“xxx xxx xxx

16. No doubt, this Court has expressed its dissatisfaction regarding the speed in compliance of aforesaid order of this Court by the respondent, however lack of speed alone is not sufficient for this Court to take action against the respondent on the ground of deliberate and wilful disobedience of the orders of this Court. Though this Court does not appreciate the delay on the part of the respondents in carrying out of the directions of this Court, however, it is not sufficient to hold up the respondents for committing contempt of court within the ambit of Section 2(b) of the Contempt of Courts Act, 1971.



17. As repeatedly held by the Supreme Court, disobedience of only such a level which brings up the deliberate, wilful and intended action on the part of a person to disobey the order of the court, it would classify as contempt of court.

xxx xxx xxx”

(Emphasis Supplied)

36. Thus, in case the petitioners have any grievance with the aforesaid decision dated 10th May, 2024 passed by the respondents, the petitioners are at liberty to challenge the same in appropriate proceedings.

37. This Court also accepts the unconditional apology submitted on behalf of the respondents.

38. Accordingly, no further orders are required to be passed in the present petitions.

39. The present petitions are disposed of, in the aforesaid terms.

MINI PUSHKARNA, J

MAY 13, 2024

ak