



2024:DHC:3685



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

% Judgment delivered on: 02.05.2024

+ **W.P.(C) 7570/2020****VIRENDRA SINGH**

..... Petitioner

versus

**THE MANAGER HARYANA SHAKTI
SENIOR SECONDARY SCHOOL & ORS**

..... Respondents

Advocates who appeared in this case:

For the Petitioner : Mr. Satyendra Mishra, Advocate

For the Respondent : Mr. Ashish Nischal, Mr. Arun Nischal
and Ms. Rinku Shah, Advocates for R-1.Mr. S.K. Mishra and Mr. Pankaj
Balwan, Advocates for R-2 to 4/DOE.
(through VC).**CORAM:****HON'BLE MR. JUSTICE TUSHAR RAO GEDELA****JUDGMENT****TUSHAR RAO GEDELA, J. (ORAL)****[The proceeding has been conducted through Hybrid mode]**1. This is a writ petition under Article 226 of the Constitution of India, *inter alia*, seeking following prayers:*“a) Pass an appropriate writ , order or directions in the*



nature of mandamus or any other writ , order or direction , thereby declaring the letter dated 13.01.2020 of the Respondent no. 1 as illegal, perverse, unconstitutional , null and void ab-initio in the interest of justice.

b) Pass an appropriate writ, order or directions in the nature of mandamus or any other writ, order or direction , thereby directing the respondents to make immediate payment of Rs. 19,50,522/- (Rupees Nineteen Lakh Fifty Thousand Five Hundred Twenty Two Only) as salary dues for a period for fifteen months from April 2017 to June 2018 as per provisions under Rule 121 of DSEAR, 1973;

c) Pass an appropriate order or directions, thereby directing the respondents to further pay an interest @ 12% PA for the delayed payment of the due amount as mentioned above , in the interest of justice;"

2. It is not disputed that the petitioner was serving respondent no.1/school on the post of Principal when by the order dated 31.03.2017, the respondent no.1 issued an Office Order thereby compulsorily retiring the petitioner with immediate effect in pursuance of the provisions of FR 56 (j) and Rule 59(2) (E) of Delhi School Education Rules, 1973. The petitioner made a representation to respondent no.1 opposing the alleged illegal and arbitrary action of respondent no.1 and simultaneously, made a representation to the respondent no.2/DOE.

3. Though, in the interregnum, a lot of correspondences were exchanged between the parties, however, the same would not be germane to the said dispute. Suffice it to note that the Director of Education by the order dated 05.07.2019, categorically observed that DE nominees had opposed the action which was taken by the Managing Committee regarding the compulsory retirement against the petitioner.



In such circumstances, it was also observed in the said order that the Managing Committee of respondent no.1 should rectify the said illegal action taken against the petitioner and constitute a Disciplinary Committee under the provisions of Rule 118 of DSEAR, 1973 by its order dated 12.06.2017.

4. The petitioner in the meanwhile had filed a LPA No.279/2017 and in compliance of the said order of the learned Division Bench dated 30.11.2017, *vide* the order dated 22.01.2018, the Manager of the School was directed to comply with the instructions contained in the order dated 12.06.2017.

5. The Managing Committee of respondent no.1 *vide* its order dated 26.06.2018 reinstated and asked the petitioner to join the duties with effect from the same day. It is also submitted that the petitioner, in fact, had indeed joined on 26.06.2018. Subsequently, on 30.06.2018, the petitioner retired from services.

6. Though the pensionary benefits upon superannuation were all granted, however, the grievance of the petitioner is that for the period from 01.04.2017 to 30.06.2018, the 15 months salary has not been paid by the school.

7. The issue raised in the present petition is no more *res integra* in view of the decision rendered by this Court in ***Hena Dutta vs. The Director of Education & Ors*** dated 27.03.2024 in W.P.(C) 7356/2012.

The relevant paras of the same are extracted hereunder:-

“25. It is trite principle that where a person has not worked, such person may not be entitled to any arrears of salary and other emoluments, however, in case where a person is deprived or prevented from rendering services, that period



surely creates an entitlement to the person for arrears of pay and other emoluments.

26. This Court finds support in the aforesaid principle based on the judgment of the Supreme Court in **Commr., Karnataka Housing Board v. C. Muddaiah** reported in (2007) 7 SCC 689 wherein it is held as under:-

“34. We are conscious and mindful that even in absence of statutory provision, normal rule is “no work no pay”. In appropriate cases, however, a court of law may, nay must, take into account all the facts in their entirety and pass an appropriate order in consonance with law. The court, in a given case, may hold that the person was willing to work but was illegally and unlawfully not allowed to do so. The court may in the circumstances, direct the authority to grant him all benefits considering “as if he had worked”. It, therefore, cannot be contended as an absolute proposition of law that no direction of payment of consequential benefits can be granted by a court of law and if such directions are issued by a court, the authority can ignore them even if they had been finally confirmed by the Apex Court of the country (as has been done in the present case). The bald contention of the appellant Board, therefore, has no substance and must be rejected.”

27. In view of the above, it is beyond cavil that the petitioner would atleast be entitled to all arrears of pay and other emoluments as per the entitlement w.e.f. 22.11.2011 through till 10.09.2012 when she was re-employed on 11.09.2012. The deprivation of working environment during the aforesaid period is surely not the fault of the petitioner.”



8. It is apparent from the aforesaid facts that the petitioner was denied the opportunity to render services at the post of Principal by the action taken by respondent no.1 which was declared as illegal and set aside. On such action having been held as illegal, the petitioner's right to the emoluments for the intervening period gets attracted. The principle of "No work No pay" in such circumstances cannot be pitched against the petitioner for the reason that it was not a voluntary act of abandonment or unwillingness to work by the petitioner, but an act whereby the petitioner was deprived from rendering such services for no fault of his. In such circumstances, it cannot also be countenanced that the petitioner would be disentitled for salary for the said period, for which he has been illegally and unlawfully deprived from rendering services.

9. In view of the above, there can hardly be any doubt as to the entitlement of the petitioner for the salary and other pay and allowances with effect from 01.04.2017 till 30.06.2018.

10. The second question which arises in the present case is as to who would be liable to pay the salaries for such period. The controversy had arisen in the present case since the respondent no.1 is admittedly a government aided school. The component of payment for the respondent no.1 society is to the extent of 5% and the remaining 95% is catered to by the GNCTD/DoE. For the period in question, it appears that the GNCTD/DoE had restrained itself from releasing grant-in-aid for the reason that the respondent no.1 school was not adhering to the Rules and Regulations of DSEAR, 1973 and other formalities which would entitle it for the grant-in-aid ordinarily.



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11. The right and entitlement of the petitioner to the salary for the aforesaid period in any case has been upheld by this Court. So far as the petitioner is concerned, it would hardly be relevant as to who ends up footing the bill. All that the petitioner is concerned with is, his salary, pay and allowances for such period.

12. It appears that respondent no.1 has already filed a Writ Petition bearing WP(C) No.2901/2022 challenging the non release of grant-in-aid for the said period and the same is pending adjudication before this Court. The same shall be decided as and when the said writ petition is taken up for disposal.

13. For the present, the respondent no.1 is directed to release pay, emoluments and all allowances for which the petitioner is found to be entitled, for the period with effect from 01.04.2017 through till 30.06.2018 with interest @ 6% per annum. The said exercise be carried out within a period of eight weeks from today.

14. The release of arrears of salary as directed above, shall, obviously be subject to the outcome of W.P.(C) 2901/2022 only with respect to the contribution alone. That will not have any effect on the entitlement of the petitioner as decided above.

15. In view of the above, the present writ petition is disposed of in the above terms with no order as to costs.

TUSHAR RAO GEDELA, J

MAY 2, 2024

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