



2025:DHC:80



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI*****Decided on 07.01.2025***+ **W.P.(C) 6863/2021 & CM APPL. 21706/2021****SOMA BHADRA**

.....Petitioner

Through: Mr. Khagesh B. Jha, Ms. Shikha
Sharma Bagga, Mr. Ankit Mann,
Mr. Naman Jain, Ms. Jyoti
Shokeen, Advocates.

versus

PRUDENCE SCHOOL DWARKA AND ORS.RespondentsThrough: Ms. Sarita Malhotra, Advocate for
R-1 and 2.
Ms. Latika C., Advocate for R-3.**CORAM:****HON'BLE MR. JUSTICE PRATEEK JALAN****PRATEEK JALAN, J. (ORAL)**

1. The petitioner was employed as a Trained Graduate Teacher ["TGT"] (Music Vocal) in the respondent No. 1 – School. At the time she filed the writ petition, respondent No. 1 had issued an order dated 23.04.2021, by which the petitioner was “put on a break” till the normalisation of COVID -19.

2. The reliefs claimed in the writ petition are as follows:

“a) Direct the respondent school to quash the impugned communication dated 23.04.2021 (ANNEXURE-A1), thereby permit the petitioner to perform her lawful duties of an employee in school.

b) Direct the respondent to not to terminate the petitioner without following due process of law as mandated under DSEAR, and till the pendency of the writ petition being vindictive for approaching this Hon'ble Court.



2025:DHC:80



c) Direct the respondent school to start disbursing uninterrupted regular lawful salary to the petitioners as per 7th CPC.

d) Direct the respondent no. 1 & 2 to disburse the lawful arrears amounting to the arrears as per ANNEXURE-A6, with interest @12% P.A. as per the calculations chart annexed;

e) allow the writ petition with cost;

f) or pass any other order or further orders this Hon'ble court be fit on the basis of above-mentioned facts and circumstances of the case."

3. I have heard Mr. Khagesh B. Jha, learned counsel for the petitioner, and Ms. Sarita Malhotra, learned counsel for respondent Nos. 1 and 2.

4. Mr. Jha states at the outset that prayers (a) & (b) of the petition have been rendered infructuous, as the petitioner has subsequently been permitted to join the respondent No. 1 School.

5. The remaining prayers relate to the petitioner's entitlement for salary in terms of the reports of the 6th and 7th Central Pay Commission ["CPC"].

6. The arrears sought by the petitioner have been detailed in a chart annexed to the writ petition as Annexure A-6. It covers arrears for a period prior to the 7th CPC, from the month of October 2012 onwards, as also dues in terms of the 7th CPC with effect from 01.01.2016 onwards. For this purpose, Mr. Jha relies upon Section 10 of the Delhi School Education Act, 1973, which provides as follows:

"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....."

7. The facts, as pleaded in the writ petition, are that the petitioner first joined the services of the respondent – school on 31.03.2010, and was



2025:DHC:80



confirmed on 08.07.2014. According to the petitioner, she was thereafter coerced to resign in the year 2015, and appointed afresh by an appointment letter dated 02.01.2015.

8. At the outset, Ms. Malhotra raises a preliminary objection, that the writ petition is not maintainable in view of the judgment of the Supreme Court in *St. Mary's Education Society v. Rajendra Prasad Bhargava & Ors.* [(2023) 4 SCC 498]. Learned counsel relies upon paragraph 75 of the said judgment, wherein the Court has summarised its conclusions as follows:

“75. We may sum up our final conclusions as under:

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.

75.2. Even if it be assumed that an educational institution is imparting public duty, the act complained of must have a direct nexus with the discharge of public duty. It is indisputably a public law action which confers a right upon the aggrieved to invoke the extraordinary writ jurisdiction under Article 226 for a prerogative writ. Individual wrongs or breach of mutual contracts without having any public element as its integral part cannot be rectified through a writ petition under Article 226. Wherever Courts have intervened in their exercise of jurisdiction under Article 226, either the service conditions were regulated by the statutory provisions or the employer had the status of “State” within the expansive definition under Article 12 or it was found that the action complained of has public law element.

75.3. It must be consequently held that while a body may be discharging a public function or performing a public duty and thus its actions becoming amenable to judicial review by a constitutional court, its employees would not have the right to invoke the powers of



the High Court conferred by Article 226 in respect of matter relating to service where they are not governed or controlled by the statutory provisions. *An educational institution may perform myriad functions touching various facets of public life and in the societal sphere. While such of those functions as would fall within the domain of a “public function” or “public duty” be undisputedly open to challenge and scrutiny under Article 226 of the Constitution, the actions or decisions taken solely within the confines of an ordinary contract of service, having no statutory force or backing, cannot be recognised as being amenable to challenge under Article 226 of the Constitution. **In the absence of the service conditions being controlled or governed by statutory provisions, the matter would remain in the realm of an ordinary contract of service.***

75.4. Even if it be perceived that imparting education by private unaided school is a public duty within the expanded expression of the term, an employee of a non-teaching staff engaged by the school for the purpose of its administration or internal management is only an agency created by it. It is immaterial whether “A” or “B” is employed by school to discharge that duty. In any case, the terms of employment of contract between a school and non-teaching staff cannot and should not be construed to be an inseparable part of the obligation to impart education. This is particularly in respect to the disciplinary proceedings that may be initiated against a particular employee. It is only where the removal of an employee of non-teaching staff is regulated by some statutory provisions, its violation by the employer in contravention of law may be interfered with by the Court. But such interference will be on the ground of breach of law and not on the basis of interference in discharge of public duty.

75.5. From the pleadings in the original writ petition, it is apparent that no element of any public law is agitated or otherwise made out. In other words, the action challenged has no public element and writ of mandamus cannot be issued as the action was essentially of a private character.”

[Emphasis supplied]

9. It is evident from the aforesaid extracts of the judgment of the Supreme Court itself, that the writ jurisdiction remains available if the service conditions of an educational institution are regulated by statute. In the present case, the petitioner’s case is based upon the provisions of



2025:DHC:80



Section 10 of the Delhi School Education Act, 1973. A Division Bench of this Court in *Bharat Mata Saraswati Bal Mandir Senior Secondary School v. Vinita Singh and Others* [LPA 601/2022 decided on 07.07.2023] has also considered the judgment in *St. Mary's* [*Supra*], and held a writ petition to be maintainable. As in the present case, the writ petition in that case also concerned implementation of the 7th CPC with regard to school teachers. In view of the aforesaid, the preliminary objection as to maintainability of proceedings under Article 226 of the Constitution is rejected.

10. The second ground urged by Ms. Malhotra concerns delay and laches. It is submitted that the present writ petition was filed in the year 2021, whereas the petitioner seeks arrears of salary from the year 2012 under the 6th and 7th CPC. In support of this contention, Ms. Malhotra relies upon the judgment of the Supreme Court in *Rushibhai Jagdishbhai Pathak v. Bhavnagar Municipal Corporation* [(2022) 18 SCC 144], and of a Division Bench of this Court in *Ritika Sharma v. DAV Public Primary School & Ors.* [LPA 32/2021 decided on 22.01.2021].

11. The decision in *Bharat Mata Saraswati* [*Supra*] decides this issue also, in favour of the petitioner. The very same contention was taken in the said case and rejected with the following observations:

“12. 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.

13. In *Union of India v. 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.

14. Further, the judgment in *Rushibhai Jagdishbhai Pathak v. Bhavnagar Municipal Corporation* (*supra*) offers no assistance to the



2025:DHC:80



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.”

12. It may be noted that the judgment in *Rushibhai Jagdishbhai Pathak [Supra]* was cited before the Division Bench, and held not to apply in a case similar to the present case.

13. In *Ritika Sharma [Supra]*, a representation was made for the first time in the year 2020 for arrears from 2007 onwards. The petition was filed only in 2021. The writ petitioner had resigned from service about 1.5 years prior to making the representation. In these circumstances, the Division Bench affirmed the order of the Single Judge dismissing the writ petition on the ground of delay and laches. The particular facts of that case are thus distinguishable from the present case, which is practically on all fours with the recent decision in *Bharat Mata Saraswati [Supra]*.

14. Ms. Malhotra sought to distinguish the judgment in *Bharat Mata Saraswati [Supra]* on the ground that arrears were granted in that case only under the 7th CPC, with effect from 01.01.2016, whereas the relief sought by the petitioner in this case goes back to the year 2012.

15. Mr. Jha countered this submission on the ground that the principle laid down by this Court in *Bharat Mata Saraswati [Supra]* is not confined to relief under the 7th CPC. He also placed reliance upon a Division Bench judgment in *Gaurav Arora v. Goodlay Public School and Ors.* [in LPA 518/2021, decided on 11.10.2023], in which the writ petition was instituted in the year 2021, with regard to arrears and salary on account of the recommendations of the 6th CPC with effect from 01.01.2006 until 31.12.2015, and the 7th CPC from 01.01.2016 onwards. The Court observed as follows:



2025:DHC:80



“In the light of the aforesaid judgment, the Appellant is certainly entitled for revised pay scale, as well as arrears of salary, on the basis of 6th and 7th Pay Commission recommendations”

16. In view of the fact that the 6th CPC recommendations had already been implemented by the respondent in that case, the Division Bench passed the following directions:

“6. The affidavit reveals that the Government issued the notification for paying the arrears of salary as per the 6th Pay Commission recommendations w.e.f. 01st January, 2006 and the Respondent-School has implemented the same. It is also averred that the Petitioner’s arrears in terms of the 6th Pay Commission stand paid by the Respondent-School. This fact is not disputed by Mr. Khagesh B. Jha, learned counsel for Appellants. However, he alleges variance between the arrears vis-à-vis the amounts disbursed by the Respondent-School, and further disputes Respondent-School’s calculation of the arrears itself. Accordingly, the Respondent-School is directed to recalculate the arrears as per the 6th Pay Commission, and pending dues, if any, shall be paid within a period of four weeks from today.

7. In respect of pay scale in terms the 7th Pay Commission, undisputedly the total amount of the pending dues has not been paid so far and balance dues, if any, have to be paid by revising the salary w.e.f. 01st January, 2016, as has been done in respect of all other teachers serving in Delhi.

8. Resultantly, the Respondent-School is directed to release all arrears/ emoluments to the Appellant as per the 7th Pay Commission, within a period of four weeks from today, failing which it shall carry an interest of 9% per annum.”

17. Although the aforesaid judgments do suggest that delay and laches would not ordinarily bar the grant of relief sought by the petitioner, in the facts of the present case, I am of the view that the petitioner cannot be granted relief in writ proceedings, for the period prior to her reappointment on 02.01.2015. The petitioner’s contention that she was coerced to resign in the year 2015, and then appointed afresh on 02.01.2015, is not supported by any representation or other action taken by her at the relevant time. It is only at the time of filing of the present



2025:DHC:80



writ petition that she has made this allegation for the first time, and sought arrears for the period relating to her original appointment in the year 2010. The factual averments, with regard to coercion, have been controverted in the counter affidavit. To this extent, I am of the view that the petition raises a disputed question of fact, and is barred by laches. The relief in this writ petition is therefore confined to payment of salary and arrears for the period 02.01.2015 onwards.

18. The only remaining ground taken by Ms. Malhotra is that, during the COVID-19 lockdown, the petitioner did not provide services to the school for the period 23.04.2021 until 16.09.2021. This point is also answered by reference to the circular of Government of National Capital Territory of Delhi dated 18.04.2020 which states as follows:

“x. Shall neither stop payment of monthly salary nor reduce the existing total emolument to the teaching and non-teaching staff of their schools in the name of non-availability of funds and arrange the funds in case of any shortfalls from the Society / Trust running the school.”

19. Other than the aforesaid objections, no other ground is argued by Ms. Malhotra. It is clear from several decisions of this Court, including the Division Bench decisions cited above, that grant of salary in terms of the reports of the 6th and 7th CPC is a statutory obligation of the respondent No. 1 – School.

20. In view of the above, the respondent No.1 – school is directed to re-compute the unpaid emoluments and/or arrears of salary payable to the petitioner under the 6th CPC for the period 02.01.2015 to 31.12.2015, and under the 7th CPC w.e.f. 01.01.2016. The said amount be paid to the petitioner within eight weeks from today, failing which it will carry interest at the rate of 9% p.a. from today.



2025:DHC:80



21. The writ petition, alongwith the pending application, is disposed of with these directions.

PRATEEK JALAN, J

JANUARY 7, 2025
'Bhupi/ss/kb'/'