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

\+ W.P.(C) 12991/2022

SHASHI KIRAN .....Petitioner

Through: Ms. Kritika Matta, Mr. Nikhil Parmar, Mr. Pradeep Kumar, Advocates for Mr. Anuj Aggarwal, Advocate.

versus

SIDDHARTH INTERNATIONAL PUBLIC SCHOOL & ORS. .....Respondents

Through: Mr. Rajesh Mohan Sinha, Mr. Prateek Mohan Sinha, and Ms. Namita Sinha, Advocates for R-1 and 2.
Mr. Sujeet Kumar Mishra, Mr. Saarthak Bansal, and Mr. Pankaj Balwan, Advocates for DoE.
Dr. Rajeev Kumar, OSD Zone-6 for DOE.

**CORAM:**
**HON'BLE MR. JUSTICE PRATEEK JALAN**

**<u>O R D E R</u>**

**% 27.05.2025**

1. The petitioner has filed this writ petition seeking payment of her retiral benefits by respondent no. 1 - School, including gratuity and leave encashment, alongwith interest. She also assails a communication of the School dated 30.03.2021, by which the School offered to pay her leave encashment and gratuity, but with a rider that on receiving the above, she would withdraw another writ petition filed in this Court [W.P.(C) 11519/2019]

2. I have heard Ms. Kritika Matta, learned counsel for the petitioner, and Mr. Rajesh Mohan Sinha, learned counsel for the School.

3. The petitioner was employed as a Teacher in respondent No.1 – Siddharth International Public School ["School"] with effect from 01.01.2011. She retired on 31.03.2021.

4. During the period of her employment, the petitioner has filed W.P.(C) 11519/2019, alongwith other employees of the School, seeking the benefit of pay scales provided under the recommendations of the 7th Central Pay Commission ["CPC"] by the School. That writ petition remains pending in this Court.

5. In the meanwhile, in view of her impending retirement, she addressed a communication to the School for payment of her balance salary, leave encashment, etc.

6. On the day prior to her retirement, i.e., 30.03.2021, the School addressed the following communication to her:

> *"Subject: Regarding your gratuity and leave enmeshment*
>
> *Ms. Shashi Kiran*
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> *At the onset, the school wishes to extend a warm and happy retirement to you and we wish you good luck for the next phase of your life.*
>
> *As per your request on e-mail,* ***the leave encashment and gratuity will be paid to you as per last pay drawn.*** *Your date of Birth is 08/03/1961 and superannuation is on 31/03/2021 (afternoon).*
>
> ***On receiving the above, you will withdraw the matter with W.P.C no 11519/2019 in the Honorable High Court of Delhi."***
>
> (Emphasis Supplied)

7. In view of the stipulation that, upon receiving leave encashment and gratuity in terms of her last pay drawn, the petitioner would withdraw the pending writ petition, the petitioner did not accept the amount.

8. Ms. Matta submits that, without prejudice to the rights and contentions of the parties in the said writ petition, the School at least ought to have released the amount of leave encashment and gratuity on

the basis of the last pay drawn.

9. As far as this aspect is concerned, Mr. Sinha submits that the School did not lay any precondition for payment of her leave encashment and gratuity on this basis. He also submits that the petitioner has not exhausted her remedies, as she ought to have made a representation to the Directorate of Education [“DoE”], rather than approaching this Court under Article 226 of the Constitution. He further submits that the petitioner’s claim should have been agitated by way of a civil suit rather than by way of a writ petition. Mr. Sinha has drawn my attention to Sections 2(h) and 10 of the Delhi School Education Act, 1973, [“the Act”] to submit that the petitioner ought to have approached DoE, and could have filed a writ petition only if she was aggrieved by the action or inaction of DoE. He also relies on a Division Bench of this Court in *Servants of People Society & Ors. v. Smt. Sudesh Oberoi & Anr.*[1] to submit that a civil suit would have been maintainable, notwithstanding the bar on the jurisdiction of the Civil Court under the Act. He further submits that the petitioner, now being a retired employee, is not entitled to avail the remedy under Article 226 of the Constitution.

10. I do not find any merit in the above contention raised by Mr. Sinha. The School is admittedly a private, recognized, unaided school, operating under the purview of the Delhi School Education Act and Rules, 1973 [“DSEAR”]. The terms and conditions of service for employees are statutorily regulated in DSEAR. In such circumstances, the Court’s jurisdiction under Article 226 of the Constitution is attracted. The present case raises no disputed questions of fact. Reference, if required, in this

connection may be made to the recent judgments of the Supreme Court in *St. Mary's Education Society v. Rajendra Prasad Bhargava,*[2] and *Army Welfare, New Delhi v. Sunil Kumar Sharma & Ors.*[3], in which, even while holding that the writ jurisdiction is limited in such matters, the Supreme Court has carved out an exception for cases where terms of service are statutorily regulated. The Division Bench in *Bharat Mata Saraswati Bal Mandir Sr. Secondary School vs. Vinita Singh & Ors.*[4] has clearly explained this basis for writ proceedings to be entertained, in cases covered by the DSEAR.

11. The Division Bench judgment cited by Mr. Sinha is also inapposite. The said judgment, was rendered in a Regular First Appeal arising out of a decree passed by the Civil Court, and deals only with the question of jurisdiction of the Civil Court under DSEAR, and not with the writ jurisdiction of this Court.

12. Turning now to the merits of the matter, the communication dated 30.03.2021, extracted above, clearly concedes the School's liability to pay leave encashment and gratuity, at least on the basis of the petitioner's last pay drawn. However, the last sentence, which links such payment with the petitioner withdrawing the pending writ petition, in which she seeks 7th CPC scales, was wholly irregular, illegal, and *mala fide*. Although Mr. Sinha submits that no condition was laid for release of the petitioner's leave encashment and gratuity, I am of the view that the letter reads otherwise. The petitioner could not have taken the benefit of release

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[1] 2007 SCC Online Del 833.
[2] (2023) 4 SCC 498.
[3] 2023 SCC OnLine SC 1896.
[4] 2023 SCC OnLine Del 3934

of leave encashment and gratuity on the basis of the said communication without committing herself to withdraw the pending litigation. This is the controversy she rightly chose to avoid, and instead approached this Court for relief.

13. Ms. Matta also seeks payment of interest on the amount due to the petitioner. I am of the view that this request is also merited. To the extent that the dues calculated on the last pay drawn were admitted by the School, the same ought to have been released without demur, conditions, or riders. The School failed to do so, and must bear the consequences.

14. Without prejudice to the rights and contentions of the parties in W.P.(C) 11519/2019, which remains pending, the School is directed to release the leave encashment and gratuity payable to the petitioner, as per her last pay drawn, within a period of four weeks from today. The amount will carry interest at the rate of 9% p.a. from the date of the petitioner's superannuation until the date of final payment.

15. If the petitioner succeeds in [W.P.(C) 11519/2019], consequential appropriate relief, with regard to enhanced gratuity or leave encashment, may be considered in the said petition.

16. The writ petition is disposed of with these directions.

17. The School will also pay costs of this petition, assessed at Rs.20,000/-, to the petitioner.

**PRATEEK JALAN, J**

**MAY 27, 2025**
SS/JM/