

**(2010) 02 DEL CK 0044**  
**In the Delhi High Court**  
**Case No : C.M. (M) 788 of 2009**

Anju Singh

APPELLANT

Vs

Greenfields Public School and Another

RESPONDENT

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**Date of Decision :** 22-02-2010

**Acts Referred:**

Civil Procedure Code, 1908 (CPC) — Order 7 Rule 11  
Constitution of India, 1950 — Article 227  
Delhi School Education Act, 1973 — Section 10, 11, 25, 8, 8(3)

**Citation :** (2010) 02 DEL CK 0044

**Hon'ble Judges :** S.N. Dhingra, J

**Bench :** Single Bench

**Advocate :** D.S. Chaudhary, for the Appellant; Rajesh Yadav, for the Respondent

**Final Decision :** Allowed

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## Judgement

Shiv Narayan Dhingra, J.—By way of present petition under Article 227 of the Constitution of India, the petitioner has assailed an order dated 15th July, 2009 passed by learned trial court whereby an application of the respondents under Order VII Rule 11 CPC was allowed and the suit of the petitioner was dismissed on the ground of res judicata.

2. Brief facts relevant for the purpose of deciding the present petition are that the petitioner was a teacher with respondent school, she filed a suit before the Civil Judge seeking a declaration and mandatory injunction regarding the earned leave and adjusting the period of her leave from 26th July, 2006 to 3rd August, 2006 against Earned Leave and seeking refund of Rs. 4,061/- which was deducted from her salary. This suit was rejected by the learned Civil Judge vide order dated 20th October, 2007 on the ground that the Civil Court had no jurisdiction to entertain the said suit in view of Section 25 of Delhi School Education Act, 1973. In the opinion of learned Civil Judge, the petitioner had a right to prefer an appeal against illegal deduction and non-adjustment of grant of earned leave to the Tribunal. Against this order of learned Civil Judge, the

petitioner approached this Court by way of CM(Main) No. 339 of 2008. However, considering a judgment of Single Judge of this Court in a Writ Petition of Kathuria Public School, upholding the same view, the petitioner withdrew the Civil Misc Main Petition with liberty to approach the Tribunal. The petitioner then approached the Tribunal and filed an appeal. In the meantime, the judgment of learned Single Judge was appealed against and the Division Bench of this Court in Sonica Jaggi v. Lt. Governor and Ors. LPA No. 196 of 2008 vide judgment dated 14th August, 2008 observed that the decision in Kathuria Public School v. Director of Education 2005 (VI) AD 893 and the decision of Supreme Court in TMA Pipes Foundation case AIR 283 SC 355, does not mean the teacher has to approach the Tribunal by way of an appeal in case of her/his grievances. The Division Bench of this Court observed that:

In our opinion, the order of the learned Single Judge is clearly unsustainable. Section 8 of the Act specifies the terms and conditions of service of employee of recognized private schools and Sub-section (3) thereof provides that any employee of a recognized private school who is dismissed, removed or reduced in rank may, within three months from the date of communication of such order of dismissal to him, appeal against the same to the Tribunal constituted u/s 11, namely, the Delhi School Tribunal. In the present case, the appellant has not sought redressal in respect of any grievance pertaining to her dismissal, removal or reduction in the rank. Her plea in the writ petition is for re-fixation of her salary in accordance with the Recruitment Rules and Section 10 of the Act. The provisions of the Act do not provide for any machinery for seeking the said relief.

3. The Tribunal on the basis of judgment passed by the Division Bench of this Court dismissed the appeal of the petitioner vide its order dated 5th November 2008. After dismissal of the appeal by the Tribunal, the petitioner filed a fresh suit for the same relief again. This suit was rejected by the learned Civil Judge by impugned order on account of res judicata since the earlier suit filed by the petitioner was rejected. The net result is that the petitioner has been rendered remediless qua her grievances and alleged illegal action of the management either before the Tribunal or before the Civil Judge.

4. It is settled law that no person can be rendered remediless against a civil wrong. The Civil suit filed by the petitioner cannot be barred by res judicata since the decision given by the earlier Civil Court became null and void in view of the decision of Division Bench of this Court delivered in Sonica Jaggi v. Lt. Governor and Ors. LPA No. 196 of 2008 on 14th August 2008.

5. Keeping in view the above scenario, the present petition is allowed and I hereby set aside the impugned order passed by learned trial court and direct trial court to proceed with the trial of the suit filed by the petitioner as per law. Parties shall appear before the trial court on 4th March, 2010. In the facts and circumstances of the case, parties to bear their own costs.